Calendar No. 1843

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1819

AUTHORIZING THE SALE OF CERTAIN LAND IN ALASKA TO VICTOR POWER, OF JUNEAU, ALASKA

APRIL 24, 1956.—Ordered to be printed

Mr. JACKSON, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany H. R. 6703]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H. R. 6703) to authorize the sale of certain land in Alaska to Victor Power, of Juneau, Alaska, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The committee held a hearing on the measure, which was sponsored in the House by Hon. E. L. Bartlett, the elected Delegate from Alaska. Committee action was unanimous.

EXPLANATION OF THE BILL

H. R. 6703 authorizes the sale of approximately 1.14 acres of land in Alaska to an adjoining landowner, Victor Power, of Juneau, Alaska.

This tract is in the status of a public-service site. Fronting on Gastineau Channel, it was established to provide public access to and from upland homesites. Since then the main highway has been built and transportation to the homesites is now entirely by automobile.

Consequently, the Department of the Interior is prepared to dispose of this tract, which is irregular in size and which in any case provided a hazardous route of entry to the upland because of the rugged and precipitous nature of the terrain. Mr. Power already owns a homesite of just over 4 acres immediately adjacent to the tract in question and is anxious to round out his holdings by obtaining this additional acreage.

The Delegate from Alaska and a representative of the Bureau of Land Management, Department of the Interior, testified that lot 7 because of its size and because it drops so sharply to the beach would not be suitable for a homesite by itself.

The House committee amended the bill to permit Mr. Power to purchase the land under the act of June 1, 1938, as amended (43 U. S. C., sec. 682a), and also to provide that the purchase price of the tract shall be the fair market value. The committee also struck out a proviso in section 2 which would have reserved mineral deposits to the United States.

REPORT OF EXECUTIVE AGENCY

The report of the Department of the Interior to the House Committee is set forth below in full.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D. C., July 29, 1955.

Hon. CLAIR ENGLE,
Chairman, Committee on Interior and Insular Affairs,
House of Representatives, Washington, D. C.

MY DEAR MR. ENGLE: This is in reply to your request for the views of this Department on H. R. 6703, a bill to authorize the sale of certain land in Alaska to Victor Power, of Juneau, Alaska.

If H. R. 6703 were enacted, the Secretary of the Interior would be directed to convey to Victor Power, of Juneau, Alaska, upon his application within 1 year, lot 7, United States survey No. 3269, Alaska, for use in connection with his homesite. The bill describes the lot as containing approximately 0.73 acre; actually it contains 1.14 acres. The purchase price for the land would be the reasonable value thereof without improvement. The reasonable value would be determined by the Secretary of the Interior and could not be less than $1.25 per acre. Minerals would be reserved to the United States, and the conveyance would include no land covered by a valid existing right.

This small lot, which is located near Juneau and lies on the Gastineau Channel, lies between the homesites of Carl Hagenup and Victor Power, which are of, respectively, 4.93 acres and 4.60 acres, and both of which were patented in 1950. When the land covered by survey 3269 was subdivided for small tracts, lot 7 was reserved as a public-service site to afford public access to the channel between the tracts. Since roads are being built which, we understand, will provide the required access, it is no longer necessary for the United States to retain lot 7. Consequently, the Department is prepared to dispose of the lot which is small and not particularly valuable for homesite purposes. However, if the Department should do so, it would be required to provide veterans of World War II and the Korean conflict with a preferred right of application for a 90-day period. Therefore, we cannot assure Mr. Power that he will be able to obtain title to the lot in question.

Whether or not Mr. Power should be afforded the special privileges contemplated by H. R. 6703 is a matter for the Congress to determine. Without legislation of this type, Mr. Power would have no preference right to obtain title to the tract in question. We have no information indicating the reasons why Mr. Power should receive preference nor have we any information about his special need for the tract in question.

Since we have no need for lot 7, we would not object to the enactment of this bill, if the Congress should believe it justified. However, if it is determined to enact it, we believe that it should be revised to afford Mr. Power a preference right under the Small Tract Act (43 U. S. C., sec. 682a). If this were done, the provisions of that act would govern such matters as price and the reservation of minerals. We suggest, therefore, that all after "Alaska," at page 1, line 3, be deleted, and the following be inserted in its place: "shall have the right to purchase under the Act of June 1, 1938, as amended (43 U. S. C., sec. 682a), lot 7, United States survey numbered 3269, Alaska, within one year after the approval of this Act."

The Bureau of the Budget has advised that there is no objection to the submission of this report to your committee.

Sincerely yours,

ORME LEWIS,
Assistant Secretary of the Interior.

Enactment of H. R. 6703 is recommended by the Committee on Interior and Insular Affairs.

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Calendar No. 1845

84TH CONGRESS, 2d Session } SENATE { REPORT No. 1821

GRANTING AN EXTENSION OF TIME FOR APPLYING FOR A PATENT TO CERTAIN LANDS IN ALASKA TO THE MATANUSKA VALLEY LINES, INC., AND TO RUSSELL SWANK AND JOE BLACKARD

APRIL 24, 1956.—Ordered to be printed

Mr. JACKSON, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany H. R. 7513]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H. R. 7513) to direct the Secretary of the Interior to grant an extension of time to the Matanuska Valley Lines, Inc., and to Russell Swank and Joe Blackard within which to apply for patent to certain lands in Alaska, having considered the same, report favorably thereon with an amendment in the nature of a substitute and recommend that the bill as amended do pass.

The committee held a hearing on the measure. Committee action was unanimous.

EXPLANATION OF MEASURE

H. R. 7513, as amended, is intended to alleviate what was presented to the committee as a hardship to a small business enterprise in Alaska that would result from strict application of the regulations respecting patenting of lands in Alaska. Not more than 160 acres of public land are involved.

The bill directs the Secretary of the Interior to grant the Matanuska Valley bus lines and its proprietors a reasonable period of time in which to file application for a patent to the lands on which they already have made substantial investments, totaling between $65,000 and $70,000. The committee was informed at the hearing that the company and individuals named above purchased the lands in question under the act of August 3, 1949 (63 Stat. 679; 48 U. S. C. 364a-364e) which authorizes the sale of certain public lands in Anchorage, Alaska. In conformance with this act, the purchasers developed the lands for commercial purposes within the required 3 years after date of purchase. Although payments on the land were completed on

July 9, 1951, the purchasers, due to circumstances beyond their control, including a strike, failed to apply for a patent on the land within the required 3-year period, and therefore forfeited their rights to the lands.

The departmental spokesmen asserted at the hearing that this legislation is necessary if this Alaska small-business enterprise is not to lose its investment.

COMMITTEE AMENDMENT

The committee believes that the laws and regulations governing patenting of public lands in Alaska should be complied with, and does not want approval of this particular measure to be construed as setting a precedent for general laxity with regard to them. However, it was informed that there are circumstances peculiar to this particular case which call for relief with respect to the time in which an application might be filed.

Accordingly, it has rewritten the bill to limit the effect of the waiver. The Secretary of the Interior must find there has been compliance with the established requirements, other than the time limit for filing, before granting the extension.

REPORTS OF EXECUTIVE AGENCY

There is set forth below the report of the Department of the Interior to the House Committee. The House adopted the amendments proposed by the Department.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D. C., December 20, 1955.

Hon. CLAIR ENGLE,
Chairman, Committee on Interior and Insular Affairs,
House of Representatives, Washington 25, D. C.

MY DEAR MR. ENGLE: This is in reply to your request for the views of this Department on H. R. 7513, a bill to authorize the conveyance of certain lands in Alaska to the Matanuska Valley Lines, Inc., and to Russell Swank and Joe Blackard.

We recommend that H. R. 7513 be enacted, if amended along the lines of the enclosed redraft.

H. R. 7513 would direct the Secretary of the Interior to convey, without further compensation, certain lands in Alaska to Joe Blackard and Russell Swank, and to the Matanuska Valley Lines, Inc.

The lands which would be conveyed under H. R. 7513 were purchased by the named parties under the act of August 30, 1949 (48 U. S. C., sec. 364a–364e), which authorizes the sale of certain public lands in Alaska and provides that a purchaser must develop the purchased lands satisfactorily for commercial purposes within 3 years after the date of purchase. Mr. Swank, Mr. Blackard, and the Matanuska Valley Lines completed payment for the lands on July 9, 1951 but failed to apply for a patent on the lands within 3 years, as required by the 1949 act and the regulations issued by this Department pursuant thereto. The Department, therefore, held that the purchasers had forfeited all rights to the land and to the purchase money which they had paid. *Matanuska Valley Lines, Inc., et al.*

(62 I. D. 243 (June 1955)). In that decision the claimants were advised that they could obtain relief only through remedial legislation.

Since the law very clearly required the forfeiture of rights by the claimants because of their failure to apply for patent, it was not necessary for the Department to rule on the adequacy of the improvements made on the lands. However, the improvements do not conform to the plan of improvements submitted by the purchasers in the negotiations for the sale and cannot, in our opinion, be considered "to promote the orderly development of lands in Alaska," as the statute under which the sale was negotiated requires. Since it is probable that the improvements would be found inadequate upon a careful investigation, we question the desirability of granting these lands to the claimants without the payment of any further compensation, as H. R. 7513 provides, and without requiring compliance with the provisions of the 1949 act. To grant unconditional relief in individual cases goes far to vitiate the basic law, and, since the objectives of the Congress in enacting the 1949 act were meritorious, we do not believe the general provisions of the statute should be ignored in the absence of more compelling reasons than those advanced in this case. Therefore, we recommend that H. R. 7513 be amended so that it would merely direct the Secretary of the Interior to grant the claimants a reasonable extension of time within which to comply with the terms of the purchase agreement. A failure to comply thereafter would result in the forfeiture of all rights. A redraft of the bill, embodying this suggestion, is enclosed.

The provisions of the Alaska Public Sale Act necessarily led, in this case, to a result which we deemed unduly harsh, and, therefore we support this remedial legislation, if amended. Our general experience of working under that act has shown us that its amendment may be desirable. Consequently, the Department is now considering proposing legislation to amend that act and to prevent in the future, among other things, such harsh results as that which necessitated the introduction of H. R. 7513.

The Bureau of the Budget has advised that there is no objection to the submission of this report to your committee.

Sincerely yours,

WESLEY A. D'EWART,
Assistant Secretary of the Interior

A BILL To direct the Secretary of the Interior to grant an extension of time to the Matanuska Valley Lines, Incorporated, and to Russell Swank and Joe Blackard within which to apply for patent to certain lands in Alaska

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior shall grant the Matanuska Valley Lines, Incorporated, such additional period of time as he shall deem reasonable within which to comply with the requirements of its certificate of conditional purchase, issued on August 20, 1951, pursuant to the provisions of the Alaska Public Sale Act of August 30, 1949 (63 Stat. 679; 48 U. S. C., secs. 364a–364e), for tracts 1, 2, 3, and 4 of block 27 of the east addition to the original townsite of Anchorage, Alaska, and tract 7 of block 34 of the east addition to the original townsite of Anchorage, Alaska.

SEC. 2. The Secretary of the Interior shall grant Joe Blackard and Russell Swank, operating a joint venture as Blackard and Swank, such additional period of time as he shall deem reasonable within which to comply with the requirements of their certificate of conditional purchase, issued on August 20, 1951, pursuant to the provisions of the Alaska Public Sale Act of August 30, 1949 (63 Stat. 679; 48 U. S. C., secs. 364a–364e), for tract 6 of block 34 of the east addition to the original townsite of Anchorage, Alaska.

Enactment of H. R. 7513, as amended, is recommended by the Committee on Interior and Insular Affairs.

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Calendar No. 1847

84TH CONGRESS, 2d Session } SENATE { REPORT No. 1823

JAMES EDWARD ROBINSON

APRIL 24, 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1414]

The Committee on the Judiciary, to which was referred the bill (S. 1414) for the relief of James Edward Robinson, having considered the same, reports favorably thereon, with amendments, and recommends that the bill, as amended, do pass.

AMENDMENTS

1. On page 1, line 6, strike the figure "$500" and insert in lieu thereof the figure "$1,000".
2. On page 2, lines 3 and 4, strike the words "in excess of 10 per centum thereof".

PURPOSE OF AMENDMENTS

The purpose of the proposed amendments is to increase the amount of the award provided in this bill and to eliminate the payment of attorney's fees from the award.

PURPOSE

The purpose of the proposed legislation, as amended, is to authorize payment of the sum of $1,000 to James Edward Robinson, of St. Louis, Mo., in satisfaction of his claim for compensation for injuries sustained by him while in the performance of certain duties assigned him while an inmate of the United States Penitentiary at Terre Haute, Ind.

STATEMENT

James Edward Robinson, while an inmate at the United States Penitentiary at Terre Haute, Ind., was assigned to the farm detail at said penitentiary on January 27, 1954. His duties there included

the operation of a feed-grinding machine. On February 15, 1954, while feeding hay into the machine, his right hand came in contact with the revolving blades of the apparatus with the result that the index and middle fingers on his right hand were so severely lacerated as to cause their amputation at the distal joints. Robinson was immediately hospitalized and received full medical attention by the Public Health Service staff at the prison hospital. He was discharged from custody on October 19, 1954.

It appears that the operation of the machine in question was part of the normal procedure of the farm detail at the prison. It further appears that the machine was equipped with all the standard safety guards but its operation involved a definite hazard, particularly while feeding relatively lightweight products such as hay. The machine is somewhat similar to an ensilage cutter except that the ensilage cutter is provided with a traveling apron to carry the cornstalks against the cutting blades. No similar apron can be devised to carry hay into the feed-grinding machine, therefore, this operation is normally done by hand. It is evident that even in exercising due care, such an occupation is hazardous.

The Department of Justice in its report points out that had the claimant been working for the Federal Prison Industries, Inc., in a pay status at the time of the injury, he could have been compensated under the general provisions of the law in the sum of $400 plus compensation for loss of time for the period he was disabled. Since he was not so employed, the only way he can be compensated is by special legislation.

The committee has amended the bill to increase the amount of the award in accordance with similar awards granted by the committee.

The committee feels that inasmuch as this is the only way the claimant can be compensated for his injury and inasmuch as he was assigned by his superiors to work on this somewhat hazardous machine, the committee is constrained to agree with the report of the Department of Justice and recommends that this legislation be favorably considered.

Attached hereto is the report of the Department of Justice submitted in connection with this bill.

DEPARTMENT OF JUSTICE,
OFFICE OF THE ATTORNEY GENERAL,
Washington, June 8, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR: This is in response to your request for the views of the Department of Justice concerning the bill (S. 1414) for the relief of James Edward Robinson.

This bill proposes to authorize payment of the sum of $500 to James Edward Robinson, of St. Louis, Mo., in satisfaction of his claim against the Government for compensation for injuries sustained by him while in the performance of certain duties assigned to him while an inmate of the United States Penitentiary at Terre Haute, Ind.

The files of the Department of Justice disclose that the claimant had been assigned to the farm detail at the penitentiary on January 27, 1954. His duties there included the operation of a feed-grinding machine. On February 15, 1954, while feeding hay into the machine, his right hand came in contact with the revolving blades of the apparatus with the result that the index and middle fingers on his right hand were so severely lacerated as to cause their amputation at the distal joints. Robinson was immediately hospitalized and received full medical attention on the part of the Public Health Service staff at the penitentiary hospital and was finally discharged from custody on October 19, 1954.

The machine on which the injury occurred was equipped with all standard safety guards, but its operation still involved a definite hazard, particularly while feeding relatively lightweight products such as hay. The machine is somewhat similar to an ensilage cutter except that the ensilage cutter is provided with a traveling apron to carry the cornstalks against the cutting blades. No similar apron can be devised to carry hay into the feed-grinding machine. If this claimant had been working for Federal Prison Industries, Inc., in a pay status at the time of the injury, he could have been compensated under the general provisions of the law in the sum of $400, plus compensation for loss of time for the period of his disability. Since he was not so employed, however, the only way he can be awarded compensation is by special legislation.

While the Department feels that it cannot support a general policy of payments to prisoners for injuries suffered by them, no objection is interposed to the enactment of this bill in view of the serious loss involved, through no apparent negligence on claimant's part, the reasonable amount proposed to be paid, and the fact that the injury occurred in the course of employment.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely,

WILLIAM P. ROGERS,
Deputy Attorney General.

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Calendar No. 1848

84TH CONGRESS, 2d Session } SENATE { REPORT No. 1824

CLEMENT E. SPROUSE

APRIL 24, 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 1671]

The Committee on the Judiciary, to which was referred the bill, (H. R. 1671) for the relief of Clement E. Sprouse, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of this proposed legislation is to pay Clement E. Sprouse, Cabin John, Md., $244.31 out of the funds of the District of Columbia in full settlement of all claims against the United States because of damage to his motorcar, February 4, 1954, when it was struck at Massachusetts Avenue and Westmoreland Circle, District of Columbia, by a motorcycle operated by a member of the Metropolitan Police Department of the District of Columbia.

STATEMENT

This bill, H. R. 1671, passed the House on March 15, 1955. A bill of identical purpose, H. R. 9261, Docket 2866, passed the House, August 4, 1954. The available facts are fully set forth in certain correspondence and statements with reference to H. R. 9261, and other data, which are attached to this report. A résumé of these facts are as follows:

On the morning of February 4, 1954, at approximately 8 a. m. claimant was proceeding east on Massachusetts Avenue at approximately 20 miles per hour when an officer of the Metropolitan Police Department on a motorcycle skidded across the center line of the highway while pursuing a speeding westbound automobile, and was

caused by loose sand and gravel on the roadway to skid into the left side of claimant's automobile, hitting the front left wheel, fender, left front door, left rear door, left rear fender and bumper, with damage to the extent of $244.31, the amount of this claim. No personal injuries to claimant were involved.

There is no indication that claimant was guilty of any negligence. Neither is there evidence that the motorcycle policeman was guilty of negligence.

The President of the Board of Commissioners, District of Columbia, points out in his letter with reference to the previous bill of identical purpose, introduced for this claimant in the 83d Congress, H. R. 9261, that where an accident occurs, and no fault or negligence is chargeable to either of the parties to the occurrence, the loss or injury will be allowed to remain where it has fallen. Therefore, the President of the Board feels that the property damage sustained by the claimant be borne by him, while the cost of repairing public property, as well as the expense incurred by reason of personal injuries to the motorcycle policeman be borne by the municipality. The Board of Commissioners accordingly recommended that H. R. 9261 not be enacted.

The claimant did not have any collision insurance whereby he can be reimbursed by his insurance carrier for the $244.31 property damage to his motorcar, which relief is sought by this bill. (See exhibits C and D attached.) Therefore, the District of Columbia having denied liability, the claimant will have no opportunity for reimbursement if this claim is disallowed.

Private Law 303, 81st Congress, 1st session, chapter 367 (H. R. 1672), involved a set of facts in many respects similar to those which give rise to the present claim. There a fire truck owned by the District of Columbia collided with an automobile legally parked on the public street. The truck was responding to a fire alarm.

In Report 707 to accompany the aforesaid H. R. 1672, it was said:

> The streets were slightly icy but the traffic regulations specifically provide that the driver of any vehicle * * * must drive them in relation to the condition of the streets.

Similarly, by the admission of the President of the Board of Commissioners of the District of Columbia, the street upon which the motorcycle policeman was traveling was strewn with loose gravel which caused the skidding and the accident. It is the committee's opinion that the motorcycle policeman should have taken cognizance of this fact, even as the operator of the fire truck was required to take cognizance of the icy pavement in H. R. 1672. Moreover, as further stated in Report 707 to accompany H. R. 1672:

> In any event, even though the damage did result from Government operation, it is not equitable that this single individual should bear the entire expense, rather than have it spread over the entire group of taxpayers who receive the benefits of this governmental operation.

By the same token, and irrespective of whether or not the District is legally liable, the committee feels the claimant is equitably entitled to reimbursement. Accordingly, the committee recommends favorable consideration of H. R. 1671.

Attached hereto are the documents referred to previously and other data pertinent to this claim.

EXHIBIT A

MAY 6, 1954.

To: Vernon E. West, Corporation Counsel, District of Columbia.
In re claim of Clement E. Sprouse for damage to automobile.

REPORT

Mr. Clement E. Sprouse, 6601 Seven Locks Road, Cabin John, Md., claims $224.31 for automobile damage resulting from a collision with a motorcycle owned by the District and driven by Officer Richard White, Traffic Division, Metropolitan Police Department. The collision occurred on February 4, 1954, at approximately 8 a. m., on Massachusetts Avenue at a point 77 feet west of the west curb of Westmoreland Circle and 2 feet across the center line of that roadway. At the time of this collision, Officer White was pursuing a speeding westbound automobile and was caused by sand and gravel on the roadway to skid across the center line of said roadway into the left side of claimant's automobile. There is no indication that claimant, who was preceeding in an easterly direction, was guilty of any negligence.

The operation of the Metropolitan Police Department is a governmental function for which the municipality is not liable to respond in damages for the negligent acts of its officers or employees. However, if there is a showing of negligence of municipal officers or employees which would render the municipality liable prima facie to respond in damages, if a private individual, the Commissioners are empowered to settle, in their discretion, such claims. The facts in the instant case fail to reveal that Officer White, while in the performance of his official duties, was guilty of negligence.

It is, for the reasons stated above,

Recommended that the claim of Clement E. Sprouse be denied.

MILTON D. KORMAN,
Assistant Corporation Counsel, District of Columbia.

EXHIBIT B

GOVERNMENT OF THE DISTRICT OF COLUMBIA,
Washington, D. C., June 30, 1954.

Hon. CHAUNCEY W. REED,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

MY DEAR MR. REED: The Commissioners have for report H. R. 9261, 83d Congress, a bill for the relief of Clement E. Sprouse.

H. R. 9261, filed on behalf of Clement E. Sprouse, 6601 Seven Locks Road, Cabin John, Md., follows the denial of a claim made by Mr. Sprouse against the District of Columbia for damage to his automobile which resulted from a collision with a motorcycle owned by the District and driven by Officer Richard White of the Metropolitan Police Department.

Officer White, at about 8 o'clock on the morning of February 4, 1954, while engaged in the performance of his official duties, was pursuing a speeding vehicle which proceeded around Westmoreland Circle and then west on Massachusetts Avenue NW. Mr. Sprouse was, at the time, west of the circle and driving his automobile in an easterly direction on Massachusetts Avenue on that portion of the roadway intended for use by eastbound traffic. While in pursuit of the speeding vehicle, loose sand and gravel on the roadway of Massachustts Avenue caused the officer's motorcycle to skid across the center of the roadway into the left side of the automobile driven by Mr. Sprouse. The collision occurred at a point 77 feet west of the west curb of Westmoreland Circle on Massachusetts Avenue and 2 feet across the centerline of that roadway.

Under date of May 14, 1954, the office of the Corporation Counsel forwarded to Mr. William N. McLeod, Jr., clerk, House District Committee, at his request, estimates for automobile repairs which were submitted by Mr. Sprouse to the District. These estimates were accompanied by a copy of the opinion rendered on this claim by the Corporation Counsel. Enclosures A through D are submitted as bearing on the facts as outlined above and will supplement that portion of the original file which has already been forwarded to Mr. McLeod.

In passing upon claims against the District, the Commissioners, as well as any subordinate official upon whom that authority has been conferred, are bound to exercise the power in accordance with the conditions imposed by applicable

legislation. Section 1–902, District of Columbia Code, 1951 edition, prescribes the scope of the Commissioners' power to settle claims, and reads, in part, as follows:

"The Commissioners of the District of Columbia are empowered to settle, in their discretion, claims and suits, either at law or in equity, against the District of Columbia whenever the cause of action—

"(a) Arises out of the negligence of wrongful act, either of commission or omission, of any officer or employee of the District of Columbia for whose negligence or acts the District of Columbia, if a private individual, would be liable prima facie to respond in damages, irrespective of whether such negligence occurred or such acts were done in the performance of a municipal or a governmental function of said District: * * *."

The law is well settled in this jurisdiction by decisions of the United States Court of Appeals for the District of Columbia Circuit and the Supreme Court of the United States that "* * * there can be no recovery against a municipal corporation for injuries occasioned by its negligence or nonfeasance in the exercise of functions essentially governmental in character. In the exercise of such functions, the municipal corporation is acting for the general public as well as the inhabitants of its territory, and represents in such capacity the sovereignty of the State" (38 Am. Jur., sec. 572, at p. 261). A municipality engaged in the operation of a police department is performing what is termed a municipal or governmental function (*Indian Motorcycle Co.* v. *U. S.* (283 U. S. 570)). For additional authority in line with the ruling in the above cited case, see *Loube* v. *D. C.* (92 F. 2d 473, 67 App. D. C. 322), and volume 2, McQuillin on Municipal Corporations (3d edition, sec. 10.05 at pp. 581–586).

Independent of the fact that a governmental function was involved, in denying the claim of Clement E. Sprouse it was determined that Mr. Sprouse was without fault and that Officer White committed no act of negligence in the performance of his official duties.

It is elementary that "* * * where an accident occurs, and no fault or negligence is chargeable to either of the parties to the occurrence, * * * the loss or injury will be allowed to remain where it has fallen" (38 Am. Jur., sec. 4, at p. 645). In this instance the private property damage to be borne by Mr. Sprouse, and the cost of repairing public property, as well as the expense incurred by reason of serious physical injuries (broken leg) suffered by Officer White, will be borne by the municipality.

Under such circumstances as outlined above, in order for the District to reimburse Mr. Sprouse for damages sustained, the authority of the Commissioners to settle claims would have to be broadened to include payment of claims without regard to whether any act by officers or employees of the District was negligently committed. The Commissioners do not recommend that such powers be conferred upon them.

Under this bill, the District of Columbia would have to respond in damages regardless of the care and prudence exercised by its employees in performing District functions. In the belief, therefore, that the proposed legislation would constitute an undesirable precedent with respect to governmental responsibility for acts not involving negligence, the Commissioners must recommend that the proposed legislation be not enacted.

The Commissioners have been advised by the Bureau of the Budget that there is no objection on the part of that office to submission of this report to Congress.

Yours very sincerely,

SAMUEL SPENCER,
President, Board of Commissioners, District of Columbia.

CABIN JOHN, MD., *February 8, 1954.*

DISTRICT OF COLUMBIA COMMISSIONERS,
14th and E Streets NW., Washington, D. C.

DEAR SIRS: I am writing this letter in regard to the accident which occurred between my car (C. E. Sprouse) and Policeman (Pvt. Richard White) on February 4, 1954, at 8 a. m. at Westmoreland Circle and Massachusetts Avenue just 77 feet northwest of city limits in Montgomery County.

Car No. 1—C. E. Sprouse, 6601 Seven Locks Road, Cabin John, Md., age 34.

Motorcycle No. 2—Pvt. Richard White, Metropolitan Police Department, age 29, 5504 Gallatin Street, Hyattsville, Md.

Car No. 1 was traveling approximately 20 miles per hour, in morning traffic, east on Massachusetts Avenue when motorcycle No. 2 chasing another car came around Westmoreland Circle without any siren sounding and sideswiped car No. 1, hitting front left wheel, and fender, left front door, left rear door, left rear fender, and bumper, including all chrome on left side.

Enclosed is a diagram of accident as taken from Montgomery County Police files. Also enclosed are three estimates of damages to car No. 1.

This is amount of auto insurance which we carry with the AAA.

Liability and bodily injury: $10,000 each person; $20,000 each accident.

Property damage: $5,000 each accident.

Medical payments: $500 each person.

Comprehensive: Actual cash value.

In car No. 1 no one was hurt but on motorcycle No. 2 Policeman White was injured and is in Emergency Hospital.

If this information is not sufficient we will be more than glad to furnish you with any that is needed. We would appreciate your immediate attention on this as we have to have the car for transportation to and from work as there isn't any out here where we are.

Thanking you.

[PRIVATE LAW 303—81ST CONGRESS]

[CHAPTER 637—1ST SESSION]

[H. R. 1672]

AN ACT For the relief of Jack Phillips

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury is authorized and directed to pay, out of funds of the District of Columbia, to Jack Phillips, District of Columbia, the sum of $337.15. Such sum represents reimbursement to the said Jack Phillips for repairing, at his own cost, his automobile struck by a fire truck while parked on Fourteenth Street Southeast, on January 23, 1948:

Provided, That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

Approved October 7, 1949.

EXHIBIT C

My name is Clements E. Sprouse; I reside at 6601 Seven Locks Road, Cabin John, Md.

I am the claimant in H. R. 1671, Document 848, a private bill now pending before the Senate Committee on the Judiciary in the 84th Congress, 1st session. With reference to the accident out of which this claim arose, I had no insurance of any character which would compensate me for the property damage done to my car in the collision upon which this claim is based. I was not injured personally, nor was anyone injured who was riding with me at the time the accident occurred.

Executed this 26th day of April, 1955.

CLEMENTS E. SPROUSE.

EXHIBIT D

AUTOMOBILE CLUB SERVICE AGENCY, INC.,
Washington, D. C., March 31, 1955.

Re Policy No. ACA 87790.

CLEMENTS ELTON SPROUSE,
Cabin John, Md.

DEAR SIR: We are writing with further reference to a telephone conversation with your wife, at which time she requested that we write informing you of the coverages previously carried under the above-numbered policy.

In reviewing our file, we find that we are affording $10,000–$20,000 bodily injury, $5,000 property damage, $500 medical payments, and comprehensive on your 1949 Pontiac. We did not afford any collision coverage. The above-numbered policy was issued effective September 4, 1953, for a period of 1 year, expiring September 4, 1954. The above-numbered policy was terminated on August 6, 1954, at your request, since the automobile had been sold.

We sincerely hope the above information is the information desired by you, and if we may be of any further assistance, please feel free to call on us.

Yours very truly,

_____ _____,

Manager, Underwriting Department.

O

Calendar No. 1849

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1825

GEORGE D. HOPPER

APRIL 24, 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 1989]

The Committee on the Judiciary, to which was referred the bill (H. R. 1989) for the relief of George D. Hopper, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

AMENDMENT

On page 2, line 6, strike the words "in excess of 10 per centum thereof".

PURPOSE

The purpose of the proposed legislation, as amended, is to pay to George D. Hopper, Foreign Service officer, class 1, American Foreign Service, retired, of Asheville, N. C., the sum of $710.28, in full settlement of all his claims against the United States for reimbursement of the loss sustained by him while in the American Foreign Service in making payment of the amount of a certain trust fund to the proper parties after having paid the amount of such trust fund in Stockholm, Sweden, to an individual not entitled to such payment who subsequently confessed to being an impostor.

STATEMENT

In 1918 the claimant in this case was a junior consul in Stockholm, Sweden. When he had been on his initial 6 months of service in the consular service, the consul became ill and he assumed the duties and responsibilities of the office. There were no other representatives of the United States in the office, and only 3 Swedish clerks.

Although not required by the regulations of the then consular service, there were informal instructions issued to render every possible service to Americans of the country in which the consul was stationed.

In August of 1918 this claimant received a letter from the executor of an estate enclosing an order from the probate court of New Milford, Conn., to pay over to certain parties by draft the sum of $710.28 as their share of an estate.

Thereupon, an extensive investigation was instituted in an effort to locate the heirs, whose last name was Carlson, as common a name in Sweden as Smith or Jones in the United States. After some little time, persons representing themselves to be the heirs presented themselves at the consulate with properly notarized documents and claimed the draft, which was handed over to them.

Subsequently, it developed that the persons who claimed the draft were imposters and, although, this claimant acted in every respect in a legal manner and had been transferred to another station, pressure was brought to bear on him by the State Department to pay from his personal funds to the true heirs the amount of their inheritance.

Documents, which are appended hereto as a part of this report, have been submitted to the committee, which can lead it to no other conclusion than that the claimant was without fault in this transaction and suffered a personal financial detriment in the interests of furthering good relations between the United States and a foreign country. Even though brought to the committee's attention belatedly, the committee is of the opinion that the claimant is entitled to the relief sought and, therefore, recommends favorable action on the bill, H. R. 1989, as amended.

Attached hereto for the information of the Senate are letters from the Department of State, together with a communication from the Honorable Sam J. Ervin, Jr., enclosing current data in support of this claim.

DEPARTMENT OF STATE,
Washington, March 6, 1930.

Hon. ED. M. IRWIN,
House of Representatives.

SIR: The Under Secretary of the Treasury has referred your letter of February 6, 1930, to this Department for reply in regard to a bill, H. R. 7300, for the relief of George D. Hopper. It is noted that you desire information concerning the records of the Department in this case and you ask for an opinion as to the merits of the bill.

It appears from the records of the Department that Mr. Hopper is desirous of receiving reimbursement by congressional authorization for $710.28, paid by him personally to individuals in Sweden to make good their loss of a legacy paid by him to the wrong persons while he was stationed at Stockholm in 1919.

For your information there are enclosed copies of correspondence regarding the case, including information with respect to the arrangement by which Mr. Hopper made payments to the rightful persons mentioned in the legacy.

Mr. Hopper, whose service record is meritorious, was required to make restitution by the Department and the commendatory manner and spirit in which it was done are deserving of attention by your committee, should it be disposed to consider reimbursing him.

Very truly yours,

S. P. CORWIN,
Acting Secretary of State.

DEPARTMENT OF STATE,
Washington, July 29, 1953.

Hon. CHAUNCEY W. REED,
Chairman, Committee on the Judiciary,
House of Representatives.

MY DEAR MR. REED: Further reference is made to your letter of June 22, 1953, enclosing for the views of the Department of State a copy of H. R. 5844, for the relief of George D. Hopper.

It is noted that in this bill Mr. Hopper's petition for relief is based on his affirmation that he was required to pay from personal funds to the rightful claimant the amount of a certain trust fund which had been previously returned to an individual at Stockholm, Sweden, who subsequently confessed to being an imposter.

The Biographic Register of the Department shows that Mr. Hopper was assigned to Stockholm from November 1917 to December 1919. The fiscal records for that period have been destroyed pursuant to authority granted by the Congress for disposal of records under the conditions specified by House Report 1831, 79th Congress, 2d session, dated March 28, 1946.

The Department is, therefore, without the necessary files upon which to formulate an opinion as to the merits of the bill before your committee.

The Department has been informed by the Bureau of the Budget that there is no objection to the submission of this report.

Sincerely yours,

THRUSTON B. MORTON,
Assistant Secretary
(For the Secretary of State).

AMERICAN CONSULATE GENERAL,
Stockholm, Sweden, March 3, 1921.

Subject: What became of a share in an estate.

The honorable the SECRETARY OF STATE,
Washington.

SIR: I have the honor to report that a check for $710.28 representing the share of Gustaf and Anna Carlson in the estate of their son who died in the United States, fell into wrong hands and the proceeds were dissipated with no prospect of recovery. From the history of the case as herein given the Department may be able to judge of the extent to which this office is responsible in the matter.

On the 3d day of July 1918, a letter was received at this consulate general from Mr. Burton E. Canfield, of Bridgewater, Conn., executor of the estate of Charles Oscar Johnson, enclosing order from the probate court of the district of New Milford, Conn., commanding him "to pay and deliver over to Gustaf Carlson and Anna Carlson" (father and mother of the deceased) "$355.14 each." The order further directed that "said payment be made through Albert Halstead, Esq., American consul general at Stockholm, Sweden, and the said Albert Halstead, Esq., is hereby authorized and empowered to receive said sums and to pay and deliver the same to the several persons named in this order." On the date of the receipt of the executor's letter, i. e., August 8, 1918, this consulate general addressed a letter to Mr. Gustaf Carlson, Oscar, Alsjöhlm, stating that information was required as to whether or not he "was the son of Charles Oscar Johnson, of Bridgewater, Conn., deceased," and that he should send his certificate, under oath, or a certificate from his pastor to show the relationship. On the 18th of September another letter was addressed to "Her Gust. Carlson, Oscar, Alsjoholm," stating that as no response had been received to the letter of August 8 he was requested to answer by return mail, with the information required. This letter was returned with an endorsement as follows:

"In reply to the above letter I beg to state that my father Carl Victor Johansson about 5 years ago lived in Chicago, America. I do not know if he is still living. He went to America 21½ years ago. He emigrated from Vissefjärda parish where he before resided. I have also two uncles in America, i. e., Carl Oscar Carlson and Johan August Carlson, both emigrated from Vissefjärda, and a sister, Astrid Maria Carlson. Should you find from the above information that I am entitled to the inheritance in question I shall get from the pastor's office evidence to the effect that my statements are true.

"I herewith respectfully ask for information what I shall do in the matter."

On the 23d of August 1918, a letter was addressed by this consulate general to the pastor at Oscar, Mortorp, asking for information regarding the family of

Charles Oscar Johnson of Bridgewater, deceased, who left as heirs his father Gustaf Carlson and his mother Anna Carlson of Oscar, Smaland. The letter concluded:

* * * "We have written to Gust. Carlson, address Kroksjo, Alsjoholm, but find that he is not the right person."

To this letter addressed to the pastor no reply appears to have been received.

I cannot find that anything further was done in this matter until the receipt on the 3d of May 1919, of another letter from Mr. Canfield stating that on July 3, 1918, he sent a draft for $710.28 with the request that the consul general pay the same to Gustaf and Anna Carlson. The draft not having been paid by March 1, 1919, Mr. Canfield wished to know if it had been received. He was informed by this office, on June 13, 1919, that the draft referred to had never been received. On the 14th of July 1919, however, another letter was addressed to Mr. Canfield informing him that the draft had been mislaid in this office and had now been found; that payment would be made to the heirs and receipts forwarded as soon as they could be obtained. "Herr Gustaf Carlsson, Oscar, Smaland," was again written to July 18, 1919, informing him that a check for $710.28 had been received and was "to be paid to you and Miss Anna Carlson being your shares in the estate of the deceased Charles Oscar Johnson." The letter further stated that the duplicate receipts that were enclosed would have to be signed before a notary public and returned to this office after which the check would be sent. Without further inquiry, on the 31st of July 1919, a letter was addressed to Gustaf Carlson, Oscar, Smaland, as follows:

"Referring to my letter of the 18th inst., I beg to thank you for the receipt you have sent to this office. Enclosed find check for $710.28, properly endorsed."

There is on file a receipt, dated Oscar, Smaland, July 28, 1919, a copy of which follows:

"We herewith acknowledge the receipt of a check for $710.28, in payment for our shares in the estate of Charles Oscar Johnson, received through the American consulate general, Stockholm."

This was signed "Gustaf Karlsson" and was witnessed and sealed by Axel Hogsell, landsfiskal of the Nybro District, but it is to be observed that no request was made that Anna Carlson sign the receipt, nor was her name mentioned in the receipt. No apparent effort was put forth to ascertain why Anna Carlson, for whom half of the amount was intended, had taken no part in the transaction.

Mr. Canfield was notified on the 1st of August 1919, of the delivery of the check, and receipt as above mentioned was enclosed.

My connection with this affair began about the middle of January last when the daughter of the man who should have received the check called at this office in company with a gentleman and caused a very unpleasant scene in the reception room which at the time was crowded with visitors. She loudly demanded immediate payment of the $710.28 which belonged to her father. Up to that moment, I knew nothing whatever of the transaction but examining the records I discovered considerable correspondence relating to it. I informed her of the fact and told her that another man of the same name as her father had obtained possession of the letter and had used the check enclosed for his own use and benefit. Both the lady and the gentleman then became violent—they were unsparing in their denunciation of this office, claiming that we had defrauded the lady's father, and so forth. To which I replied by ordering the gentleman out of the office and giving the lady again a full explanation of the matter and assuring her that I would use every effort to bring about the return of the money from the man who had received it. I immediately wrote to Gustaf Karlsson demanding the return of the money, informing him that he must have known that he had no possible right to it, but there was no response. Again I wrote him, this time by registered mail, and in due course received a card signed by him from the post office which assured me that my letter had been delivered. A letter was received from Karlsson on the 1st instant, reading as follows:

"In reply to your letter I beg to state that I have sent you receipt for the money as I was requested to do by the consul general. It is now 1½ years since I received the money and I have spent it for my support and for that reason am unable to return it to the consul general even if it were a mistake on your part."

Possibly the man Karlsson will be prosecuted by the post office authorities who have been fully advised of the facts in the case. It is hardly possible, however, that the money can ever be recovered, inasmuch as the man appears to be a laborer. I have also written the "landsfiskal" who witnessed the signature on the receipt from whom I have received this day a letter informing me that he has no

recollection of the matter and fears that one of his clerks signed his name and affixed his seal—hence, I am this day sending him the original receipt and asking him for any remarks he may see fit to make. I have likewise addressed another letter to Gustaf Karlsson threatening him with prosecution in case he fails to return the $710.28 within a reasonable time.

There can be no excuse for this man Karlsson—but that there was carelessness on the part of this office can hardly be disputed. The check for $710.28 was mailed without having had a receipt signed both by Gustaf and Anna Carlson, and after it was known to this office that the man Karlsson, with whom it had previously corresponded, was not the proper person to receive it.

Undoubtedly there will be further trouble over this affair with the daughter of Gustaf and Anna Carlson, and I am submitting the entire matter for the consideration of the Department. Copies of the correspondence will be found attached.

I have the honor to be, sir,

Your obedient servant,

D. I. MURPHY, *American Consul General.*

UNITED STATES SENATE,
COMMITTEE ON ARMED SERVICES,
June 6, 1955.

Re H. R. 1989, for the relief of George D. Hopper

SENATE JUDICIARY COMMITTEE,
Senate Office Building,
Washington, D. C.

GENTLEMEN: This bill has heretofore passed the House. I enclose some current data in support of it. I hope that this bill can be favorably reported for action by the Senate at an early date.

If you desire any further data, please let me know.

Sincerely yours,

SAM J. ERVIN, JR.

ASHEVILLE, N. C., *June 3, 1955.*

Hon. SAM J. ERVIN, Jr.,
Senate Office Building,
Washington, D. C.

MY DEAR SENATOR: With reference to H. R. 1989, introduced by Representative Shuford for my relief and which was passed recently by the House, and is now being considered by a Senate committee, I spoke to George Shuford when he was in Asheville several days ago regarding this matter. Mr. Shuford told me that you wished to have a new statement concerning my claim for reimbursement. I fully agree that this is in order as many years have passed since I filed a statement with any committee, House or Senate.

In view of the fact that the House files contain numerous documents from various sources giving the history of the case I shall not burden you with a detailed statement, but will give you a summary of the major points.

1. In 1918 I was junior consul at our consulate general in Stockholm; my chief was Albert Halstead, consul general (now deceased). I had been in the consular service (now known as the Foreign Service) only 6 months when my chief fell ill, and I automatically assumed charge of the office which at that time had no other officer, and only three Swedish clerks.

2. In August 1918 I received a letter from the executor of an estate enclosing an order from the probate court of New Milford, Conn., to pay over to certain parties—Gustaf and Anna Carlson—the sum of $710.28, as their share of an estate. A draft for this amount was enclosed, payable to Albert Halstead, consul general.

3. The duty which was imposed upon the consulate general was one for which consular regulations made no provision at that time, although consular officers were expected by the State Department to render all possible assistance to American citizens and American official bodies (such as the probate court in Connecticut in this instance). Furthermore, my chief, Consul General Halstead, had instructed me to make every effort to comply with the request of the probate court.

4. Consequently, an extensive investigation was instituted in an effort to locate the rightful heirs. Later on a new vice consul arrived—a Harvard law graduate—who took charge of the investigation, but under my supervision while I remained in charge of the office. Numerous difficulties were encountered, such as (1) incorrect names and addresses given in the will of the legator in the United

States, (2) similarity of names in Sweden (the name Carlson is as common as Smith or Jones), (3) laxity of Swedish postal officials and notaries public, (4) worst of all, when the man to whom payment was finally made confessed before Swedish officials that he was not the rightful heir, although he had previously sworn that he was the right party. The Swedish Government declined to prosecute this impostor.

5. When the rightful heirs proved their case 2 years later the State Department naturally requested me for a report and explanation. Please refer to enclosure 1, a report dated September 7, 1921, from Rotterdam.

In reply the State Department stated that although I had no legal liability I had a moral obligation to discharge by reimbursing the rightful heirs. I correctly interpreted this pronouncement to mean that if I failed to "come across" my chances for advancement in the consular service would be very slim. Accordingly, and with the approval of the Department, I paid over $710.28 in instalments during 2 years, as I was on low salary and had a family to support.

6. In 1931 former Representative C. R. Carden, of Kentucky (then my home State) introduced a bill for my relief (H. R. 4806), but it failed to pass due to lack of support from the State Department. I enclose a copy of my affidavit made at that time, also, a copy of a very informative memorandum from my old chief in Stockholm, Consul General Halstead.

7. As time passed it seemed that the attitude of the State Department changed. My steady advancement in the Foreign Service culminated in my promotion to class 1, Foreign Service officer in 1948. I retired in 1950, due to the age limit under the law, and am grateful that now—after many years of waiting—not only the State Department but the Congress, appear to be prepared to correct a situation long overdue.

May I express my deep appreciation for your interest in this matter.

Sincerely yours,

GEORGE D. HOPPER,
Consul General, Retired.

ROTTERDAM, THE NETHERLANDS, *September 7, 1921.*

ANSWER TO SPECIAL INSTRUCTION OF AUGUST 16, 1921, FROM THE DEPARTMENT OF STATE

I have the honor to acknowledge receipt of the Department's instruction of August 16, 1921, file 311.583/160, transmitting copies of correspondence from the files of the consulate general at Stockholm and from the Swedish Legation at Washington relative to the erroneous payment of certain funds to one Gustaf Carlsson, and to note the Department's instruction to render an explanation of the case.

As a preliminary statement I would remind the Department that the office in Stockholm during 1918 and 1919 was the recipient of an excessive number of such requests to investigate property rights, legal heirs, and to pay over a large number of bequests. Efforts to locate the proper legatees were in a majority of cases unsuccessful and were the subject of several dispatches to the Department, particularly with reference to seaman's war risk insurance. Also such names as "Carlsson, Johanesson" etc. in Sweden are more common than "Smith and Jones" in the United States and rarely ever did the person or bureau in America spell the name properly or give the correct post office address in Sweden. As far as time would permit I had charge of this part of the work until the departure of Consul General Halstead in May 1919, when it was turned over to Vice Consul Safely whom I always considered a very careful officer, especially in legal matters.

Investigation of the Carlsson case began shortly before the long and serious illness of Mr. Halstead in the fall of 1918, when we had no vice consul or American clerk and only one experienced Swedish clerk, when passport control was at its worst, and when I was overwhelmed with work of all kinds, to say nothing of the sudden visitation of a large number of consular and civilian refugees from Russia.

The correspondence shows that several letters of inquiry were sent out in an endeavor to locate the proper legatee; that the original instructions from the executor in America were carried out as far as possible; that these instructions did not require receipts as the payment was by means of a draft, which is a legal receipt when properly endorsed; that after unsuccessful efforts to secure a verification from the pastor in the legatee's district (pastors in Sweden holding very responsible positions in the parish) the case rested until the second letter from the executor asking that another effort be made to locate the father, if possible.

UNIVERSITY OF MICHIGAN LIBRARIES

It was then that I learned that the draft had been mislaid, but was found in the safe when I was checking over property prior to assuming charge of the office at the time of Mr. Halstead's transfer to Vienna in May 1919. As stated above, after that date all legal correspondence was prepared by Vice Consul Safety (now deceased) but I have no desire to place any blame on my former best friend for the mistakes of another.

My letter of June 13, 1919 to the executor refers to the fact that "the identity of Gustaf Carlsson and Anna Carlsson had been established," after receiving a letter signed by both parties dated May 30, 1919. After waiting a year and securing no other evidence from any other claimant I concluded that this was the proper legatee, and then sent him duplicate vouchers to sign before the proper notary public, as it had been ascertained that it would work a hardship on these old people to appear personally. This decision was made by the officer then preparing the case after due consideration, and it could not have been his deliberate intention to send the draft to a person having no right to it, which might be inferred from the next to last paragraph of the dispatch from the consul general at Stockholm. The correspondence from the executor to that time fails to mention any "J. G. Carlsson" as the real legatee and his name first appears in the note from the Swedish Legation.

The only error I can admit is that I accepted the duplicate receipts for the draft without the signature of Anna Carlsson, but they bear the combined signatures of Gustaf Carlsson and of Axel Hogsell, the notary public who refused to certify to the wife's signature "on the ground that he did not know her." However, this refusal was not made known to me then, and is first noted in the report from the public prosecutor to the Swedish Foreign Office.

It is also noted that the notary public finally admitted that he did not witness their signatures at all, that it "must have been done by his clerk without his knowledge." (See his letter of March 2, 1921.) This strange action on his part with the apparent carelessness of the Swedish postal authorities in delivering registered mail to anyone who called for it who was named Gustaf Carisson, and finally the self-confessed guilt of Gustaf Carlsson himself who was shrewd enough to see his chance to secure funds without knowing anything about his right to them, all combine to give further weight to the difficulties under which a consular officer labors in trying to render service which he is not required to perform under the Regulations.

I regret exceedingly the embarrassment the case has caused the Department and shall try to govern myself accordingly in the future. Apologies are also due Consul General Murphy for the trouble he has undergone in explaining the situation to the proper legatees. Mistakes in judgment always result in losses, many times to innocent parties. It is hoped, however, that some means may be found for recovering the misappropriated funds. In the meanwhile I shall await the Department's advice.

I have the honor to be, sir,
Your obedient servant.

(Signed) GEORGE D. HOPPER,
American Consul.

AFFIDAVIT OF GEORGE D. HOPPER

I, George D. Hopper, of Danville, Ky., do hereby depose as follows:

1. That I was born at Stanford, Ky., on July 13, 1889, passed the consular examinations in June 1917, and was commissioned October 5, 1917 by the President as a "consul of the United States of America," and assigned to the consulate general at Stockholm, Sweden, which office was in charge of Albert Halstead, consul general.

2. That I was subordinate to Consul General Halstead until his departure from Stockholm on May 1, 1919, except for 6 or 7 weeks in August and September 1918, when he was ill. From May 1, 1919, I was in charge of the office until September 1, when Consul General D. I. Murphy assumed charge.

3. That on August 8, 1918, a letter was received at the consulate general from Mr. Burton E. Canfield, of Bridgewater, Conn., executor of the estate of one Charles Oscar Johnson, alias Karl Oscar Bernhard Johansson, enclosing an order from the probate court of New Milford, Conn., commanding him "to pay and deliver over to Gustaf Carlson and Anna Carlson (father and mother of the deceased) $355.14 each, and that said payment be made through Albert Halstead, American consul general at Stockholm, Sweden." Attached to said letter was a draft for $710.28, payable to "Albert Halstead, consul general."

4. That at that time consular regulations did not regard it a part of the official duty of American consular officers to undertake to deal with such private matters as the distribution of estates or to assume any official responsibility in such cases, but if a consul should agree to attend to such private matters as a convenience to persons in the United States, especially during war times, he was expected to employ due diligence and care in the discharge of his self-imposed tasks.

5. That due to illness of Mr. Halstead, the consul general, I was in charge during August 1918 and without any other official help. Nevertheless inquiry was immediately instituted in an effort to locate the proper legatee. The exact steps taken in the long search for the rightful heir, and the conditions under which the work was done, are described in exhibit A—a copy of my dispatch to the Secretary of State, dated September 7, 1921. Due to an error in the name of the legatee, as given by the executor, also due to incorrect postal addresses, and the fact that the name "Carlsson" in Sweden is as common as "Jones" in this country, the search lasted until July 1919 when it was decided that the proper man had been found. The draft for $710.28 had been endorsed over to me by Consul General Halstead before his departure in May 1919, and it was accordingly turned over to "Gustaf Carlson" upon production by him of a receipt duly certified before a Swedish notary public.

6. That on August 16, 1921, I was notified that the consul general at Stockholm had reported that other claimants to the legacy had appeared and had protested through the Swedish Government. Official investigation disclosed the fact that the person who represented himself to me to be the rightful legatee was an imposter and that he later confessed that he had no right to the money. (See exhibit B.) It would appear that the notary public was also involved. (See exhibit C.) In view of the fact that the Carlsson, who wrongfully appropriated the money had spent it before being caught and was without resources, no practical results could be had by instituting civil suit for recovery of the money.

7. That in view of the strong protests made by the family of the rightful legatee, and to save the consulate general and the American Legation at Stockholm, as well as the Department of State from further embarrassment, I decided to reimburse the rightful lagatee for the full amount of $710.28 which had passed through my hands while acting in my official capacity as American consul in charge. In doing this I was fully mindful that neither myself or my Government was officially liable or responsible, but for a possible error on my part the incident might not have occurred, although mistakes were made by others also, to say nothing of the confessed guilt of the imposter.

8. That I paid over personally through the consulate general in Stockholm to John and Anna Karlsson, alias Gustaf and Anna Maria Carlsson, the sum of $710.28 in deferred payments beginning April 23, 1923, and ending December 26, 1924, as per exhibit E, which contains one full set of receipts bearing original signatures.

9. Therefore, in view of the foregoing I respectfully request the Congress of the United States that I be reimbursed in full plus 6 percent interest from the various dates of payment to January 1, 1930, or $935.25.

GEORGE D. HOPPER.

Subscribed and sworn to before me, a vice consul of the United States of America at Montreal, Canada, December 1, 1931.

JOHN R. BARRY,
American Vice Consul.

A true copy of the signed original.

J. W. H.

MARCH 15, 1932.

MEMORANDUM IN RE CONSUL GEORGE D. HOPPER AND CLAIM FOR REFUND OF $710.54

The Committee of Claims has before it a bill H. R. 4806, for reimbursement of a sum of $710.28 to George D. Hopper, Esq., Foreign Service officer now assigned as consul at Montreal, and formerly consul in Stockholm in 1918–19 when I was consul general there.

During my illness from pneumonia in August 1918, Mr. Hopper took charge of the consulate general and during that time received a letter from Mr. Burton E. Canfield of Bridgewater, Conn , enclosing an order from the probate court of Milford, Conn., commanding the consul general "to pay and deliver over to Gustaf Carlson and Anna Carlson (father and mother of one Charles Oscar

Johnson, deceased), the sum of $355.14 each." The court order was that the payment should be made through Albert Halstead, American consul general at Stockholm, Sweden. There was enclosed a draft payable to me for $710.28.

The duty which was imposed by the court upon me as consul general, was one for which the consular regulations made no provision at the time. The court of Connecticut was acting wholly outside of its authority in commanding that I as consul general in Stockholm should make that payment. While Mr. Hopper was in charge during my illness and judging by my experience of him for nearly a year and a half, I am satisfied that he made every possible inquiry in order to locate the legatees. In fact the search had not been finished when I returned to duty.

The registrar of the Connecticut court made an error in the name of one of the legatees and the postal address given was inaccurate. Then there are hundreds, if not thousands of Carlsons in Sweden. It is as common almost as the name Smith is in the United States.

Before the person who seemed to be the proper Carlson had been found, I was ordered away from Stockholm to Vienna as commissioner for the Peace Conference. The draft for $710.28 was, prior to my departure, endorsed by me for Consul Hopper. Consul Hopper turned the draft over to Gustaf Carlson upon his having been identified by false evidence and upon the production of a receipt duly certified before a Swedish notary public.

Consul Hopper was later informed that other claimants to the legacy had appeared and had made a protest to the Royal Swedish Government. It then developed that the person to whom the check had been paid had been an impostor who later confessed that he had no right to the money. It would seem that the notary public, a Swedish official, was involved in this fraud. How Consul Hopper could have avoided that mistake I cannot see. However, the Department of State insisted upon the reimbursement by Consul Hopper of the improper payment. I have always felt that this was unduly harsh and that had I made the mistake I should have refused to make the payment even going to the extent of retiring from the Service and having them try to sue me on my bond. Pressure from the Swedish Government was doubtless responsible for the Department's attitude. It always appears to be necessary in diplomatic relations that small matters which do involve matters of principle but affect only a few people, must be subordinated to the greater issues at stake in our foreign relations.

I feel that Mr. Hopper should never have been compelled to refund this money and the incident may have naturally, but unfairly, affected his record for efficiency.

As conditions existed in Sweden in 1918 and 1919, I cannot see how Mr. Hopper could have done other than he did and how the error could have been avoided. There was no carelessness on his part and I think an appropriation should be made to repay him the sum he was compelled to expend to refund for a mistake for which he had no moral or other responsibility. Any other course would be grossly unjust.

May I picture to you the conditions that existed at the time that the investigations were started? The United States was at war. At the consulate general in Stockholm during my service there from February 1918 to May 1919, it was unusual for Mr. Hopper and me to be able to leave before 7 o'clock in the evening and almost every night we returned to the consulate general and worked until midnight or later. All kinds of extra duties were imposed upon us and particularly in the matter of looking out for spies and when money had to be expended on account of someone in the United States, there was no way in which a consular officer could be assured that the money would go to the proper person because of the difficulty and practical impossibility of tracing people. By an inadvertence I did not return the check after my return to duty and refused to deal with the matter; it was just my good fortune that I was transferred out of Stockholm before the payment could have been made, else I should have had the trouble that came to Consul Hopper.

Permit me to say further that in 1915 and 1916 when consul general in Vienna, thousands and thousands of dollars were forwarded to me by the Department of State to be paid for the relief of relatives of American citizens, living in what was then the Austrian Province of Galicia. My consulate general was fortunate in that there was a Royal Austro-Hungarian agency called the Sparkasse through which money could be forwarded to those for whom it was destined. The responsibility for the payment of that money rested upon the Austro-Hungarian Savings Bank, or Sparkasse. In one case I was instructed by the Department of State to pay a very considerable sum of money, several thousands of dollars I believe, to a man living at a certain address in Galicia. The money was sent through the

Sparkasse to the name and address given. The Sparkasse paid the money to the wrong person who bore the same name and lived in the same apartment house as the person for whom the money was intended, only on a different floor. Complaint was made to the Sparkasse but no responsibility rested upon me because the money had been placed in the care of the Austro-Hungarian Government to be paid to a person who was an Austrian subject and living under the Austrian Government's control. Here again I was in luck, my consulate general not being held to have been derelict. It was Mr. Hopper's bad luck that there was no such agency in Sweden and he relied on a Swedish notary public who, to say the least, made a careless mistake.

In such circumstances I think the United States Government is morally bound to refund the money paid by Consul Hopper, which I hold the Department of State was wrong in requiring him to pay.

ALBERT HALSTEAD,
American Consul General at London, England.

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Calendar No. 1850

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1826

HERMAN F. GIERKE, JR.

APRIL 24, 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 3725]

The Committee on the Judiciary, to which was referred the bill (H. R. 3725) for the relief of Herman F. Gierke, Jr., having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

AMENDMENT

On page 2, line 4, strike the words "in excess of 10 per centum thereof".

PURPOSE

The purpose of the proposed legislation, as amended, is to pay to Herman F. Gierke, Jr., of Watford City, N. Dak., the sum of $2,500, in full settlement of all claims against the United States for damages from the failure of the Corps of Engineers to replace certain fences; their failure to construct containment for livestock, and for their failure to construct certain road approaches, as agreed, in return for the grant of an easement by Mr. Gierke to the United States.

STATEMENT

The record discloses that a system of relocated roads was constructed on the Fort Berthold Indian Reservation incident to the construction of the Garrison Dam and Reservoir project on the Missouri River in North Dakota. The Bureau of Indian Affairs of the Department of the Interior obtained an easement from Mr. Gierke as well as from other landowners for the necessary construction. As a part of the consideration for the easement, the United States agreed

to replace section-line fences on both sides of the road. As stated in the report of the Department of the Army, which is hereto attached, one side of the road right-of-way was open during the period of construction.

A full account of the damage suffered by the claimant is set forth in the following affidavits:

To Whom It May Concern:

R. A. Gierke, Mary C. Gierke, and H. F. Gierke maintain that the Corps of Engineers did knowingly violate every promise made in securing easement for road known as Route 19 across our land, described as the east half of section 22–149–94, McKenzie County, N. Dak.

They replaced a fence on the east side of the road but moved existing fence over on west side of road using our material. This was not the usual practice as new fences were built on both sides of the road immediately north of our land and on several other tracts where they crossed fenced land.

While several approaches were put in, they refused to put in the approaches we considered necessary to properly utilize our land which was split almost exactly in two by this road.

They deliberately dumped the drainage from approximately 2,000 acres on a 100-acre alfalfa field of ours. We have asked $500 for damage to this field but $5,000 would be nearer the actual damage and it will increase.

At no time did the Engineers make any attempt to give us the promised 100 percent containment. Our fence was thrown open and our land entered upon in the fall, and the fence that was supposed to be built before construction was started on our land, was not built until the following spring.

This containment clause was of vital importance as this land contained our winter's supply of hay in a country where your hay is the life of your herd and not replaceable. This land is a valley surrounded by several hundred thousand acres of land grazed by several thousand cattle.

After we had written said engineers numerous letters of protest, used our time, money, and car to chase them more than a thousand miles, we were sure the wrong was deliberate and they were going to do nothing to correct it.

We were forced to maintain a camp, horse, and rider to protect our hay. No one can maintain a camp, horse, and rider for $10 per day.

Bear in mind that this right-of-way was given to the Government by us absolutely free and that it was not wild cheap land but valuable valley soil, every foot of it.

(Signed) R. A. GIERKE,
MARY C. GIERKE,
H. F. GIERKE, Jr.

On this 9th day of December appeared before me, L. M. Stenehjem, a notary public in and for McKenzie County, N. Dak., R. A. Gierke, Mary C. Gierke, and H. F. Gierke, known to me as the persons executing this document.

[SEAL] L. M. STENEHJEM,
Notary Public, McKenzie County, N. Dak.

My commission expires August 17, 1956.

By Whom It May Concern:

During the winter of 1952–53, it was necessary for R. A. Gierke, Mary C. Gierke, and H. F. Gierke, Jr., to maintain a camp and rider on the reservation to protect their hay located on the east half of section 22–149–97, McKenzie County. This was due to the fact that the road known as Route 19 was open all winter through said land, and, inasmuch as there were no car passes installed, the fences were also left open.

(Signed) MARTHA HEIM,
LLOYD WHERLEY,
ART JORE.

On this 9th day of December before me, L. M. Stenehjem, a notary public, appeared Martha Heim, Lloyd Wherley, and Art Jore, known to me as the persons described in and who executed the within instrument and acknowledged to me that they executed the same.

[SEAL] L. M. STENEHJEM,
Notary Public, McKenzie County, N. Dak.

My commission expires August 17, 1956.

To Whom It May Concern:

In the year of 1952, R. A. Gierke, Mary C. Gierke, and H. F. Gierke, Jr. (joint owners), gave to the United States a certain right-of-way for road now known as Route 19 across the west half of section 22, township 149, range 94, in McKenzie County, N. Dak. There was absolutely no charge for the above easement by R. A. Gierke, Mary C. Gierke, or H. F. Gierke, Jr. However, the United States did agree to replace fence on both sides of said Route 19, to build what approaches deemed necessary by the owners of the land, as this road split 640 acres of land owned by R. A. Gierke, Mary C. Gierke, and H. F. Gierke, and to give the owners of said land 100 percent containment at all times.

This easement was secured by Mr. Ralph Shane, road engineer, United States Indian Service.

RALPH M. SHANE.

Subscribed and sworn to before me this 5th day of December 1955.

[SEAL] L. C. HUNGATE,
Notary Public, Mountrail County, N. Dak.

My commission expires December 6, 1960.

The committee wishes to point out that the bill, as originally introduced in the House of Representatives, provided for an award in the amount of $3,550 and was amended by that body to reduce the amount to $2,500. In the House report accompanying this bill it is stated:

A careful consideration of the items of damage outlined in these affidavits leads this committee to the conclusion that Mr. Gierke has suffered damage in excess of the amount of $1,550, the amount that the Army has indicated as a sum as to which it would interpose no objection. It is clear that the failure on the part of the Army engineers to comply with their explicit understanding concerning containment has resulted in serious damage to Mr. Gierke. Therefore, the committee recommends that the bill be amended by reducing the amount to be paid Mr. Gierke from $3,550 to $2,500, and that the bill amended in this manner be favorably considered.

After consideration, the committee concurs in the conclusion reached by the House of Representatives and recommends that the bill, H. R. 3725, as amended, be considered favorably.

Attached hereto and made a part hereof is the report of the Department of the Army, dated July 12, 1955.

DEPARTMENT OF THE ARMY,
Washington D. C., July 12, 1955.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of the Army with respect to H. R. 3725, 84th Congress, a bill for the relief of Herman F. Gierke, Jr.

The Department of the Army has considered the above-mentioned bill and would have no objection to its enactment, provided it is amended as hereinafter recommended.

This bill provides as follows:

"That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury, not otherwise appropriated, to Herman F. Gierke, Junior, of Watford City, North Dakota, the sum of $3,550. The payment of such sum shall be in full settlement of all claims of Herman F. Gierke, Junior, against the United States for damages resulting from the failure of the Corps of Engineers to replace certain fences, for their failure to construct containment for livestock, and for their failure to construct certain road approaches which they agreed to do in return for an easement granted by Herman F. Gierke, Junior, to the United States."

The system of relocated roads was constructed on the Fort Berthold Indian Reservation incident to the construction of the Garrison Dam and Reservoir project on the Missouri River in North Dakota. The Department of the Interior and the Department of the Army coordinated closely in an effort to minimize

inconvenience to landowners and assure their full compensation for any damage done. As a part thereof, the Bureau of Indian Affairs, Department of the Interior, obtained an easement from Mr. Gierke, among others, for the necessary construction and the Department of the Army, acting through the Chief of Engineers, accomplished the actual construction work. As part of the consideration for the grant of easement, the United States agreed that it would replace section line fences on both sides of the road. Although there was no time limit within which such replacement would be effected, and the fence was actually moved when construction was completed, one side of the road right-of-way was open during the period of construction forming the basis of the alleged damage.

The records of the Department of the Army, show that prior to the commencement of the construction work in 1952, the claimant had a fence along the line which became the centerline of the right-of-way for the new highway across his land. This fence was reset on one side of the roadway prior to the time that work was suspended for the winter of 1952. Temporary, and possibly makeshift, fences were established in an effort to provide full containment. As a result of the incomplete replacement of fences, however, Mr. Gierke claims that stacks of hay were destroyed by trespassing livestock. The records of the Department of the Army further disclose that on May 27, 1953, Mr. Gierke presented a written claim to the Department of the Army for $1,550 based on $240 for property damage consisting of the destruction of 8 tons of hay at $30 per ton, and $1,310 representing additional expenses in the operation of his ranch, by reason of retention of an added hired hand, with horse, to protect his property, exposed for lack of fencing, during the period November 20, 1952, to April 1, 1953. The claim was duly considered within administrative procedures as prescribed by the Department of the Army and disallowed. There is no information in the records and files of the Department indicating any claim in excess of $1,550 except that after the claim was disallowed, Mr. Gierke stated that that amount did not constitute all of his alleged damage.

Although the easement did not establish a time limit within which the replacement fencing was to be accomplished, and the fencing was completed in what can be considered a reasonable time, there is evidence to indicate that it was necessary for Mr. Gierke to supplement the measures taken by the Department of the Army for the protection of his property during the course of construction. In addition, it has been shown that some damage was caused to the claimant's property during that period. The amounts indicated above represent damage to hay and cost of additional help, and are considered reasonable.

In view of the circumstances of this particular case, the Department of the Army will interpose no objection to the enactment of H. R. 3725 if the amount proposed for payment to Herman F. Gierke, Jr., is reduced from $3,550 to $1,550.

The enactment of the bill in its present form would involve Federal expenditures in the amount of $3,550 or, as amended, the reduced amount of $1,550.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

ROBERT T. STEVENS,
Secretary of the Army.

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Calendar No. 1856

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1833

COL. JOHN A. O'KEEFE

APRIL 24, 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 2984]

The Committee on the Judiciary, to which was referred the bill (S. 2984) for the relief of Col. John A. O'Keefe, having considered the same, reports favorably thereon, with an amendment, and recommends that the bill, as amended, do pass.

PURPOSE

The purpose of this legislation, as amended, is to reimburse Col. John A. O'Keefe in the amount of $1,653 in full settlement for his service as adjutant general of the District of Columbia National Guard during the period from October 10, 1949, to December 13, 1949, inclusive, for which service he has never received any compensation.

AMENDMENT

On page 1, line 13, after the word "purpose" strike the period and insert the following:

> : *Provided*, That no part of the amount appropriated in this Act shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

PURPOSE OF AMENDMENT

The bill has been amended by inserting a provision prohibiting attorneys' fees, inasmuch as the committee's records fail to show any substantial service rendered by any attorney in connection with this claim.

STATEMENT

Colonel O'Keefe was appointed to the position of adjutant general for the District of Columbia National Guard by special orders as follows:

(*a*) Special Orders 151 issued by Headquarters, District of Columbia National Guard, Washington, D. C., dated 25 August 1949, by command of Brigadier General Abendroth, paragraph 1 of which states as follows:

"The appointment and assignment of the fol-named officer, in the Adjutants General Department, District of Columbia National Guard is announced, eff this date:

Headquarters District of Columbia National Guard	*Position*
Col. John A. O'Keefe O277514 AGD.	The Adjutant General MOS 2110.

National Guard Bureau form 3A, issued by the National Guard Bureau 30 September 1949, which is the official notice of Federal recognition, states as follows:

"John Aloysius O'Keefe having qualified, under sections 74 and 75, National Defense Act, is, by direction of the Secretary of the Army, extended Federal recognition in the National Guard of the District of Columbia as colonel (par. 6d NGR 15), Adjutant General's Department, Adjutant General, District of Columbia National Guard, to date from 25 August 1949 vice Nevitt, reassinged."

During the period aforementioned Colonel O'Keefe several times went into the question of District of Columbia funds to pay a salary to him as adjutant general of the District of Columbia National Guard, but was informed by the persons handling the District of Columbia funds for the National Guard that there were none available for such a purpose. He had a number of conferences with the officers over a period of several months, seeking to work out a satisfactory arrangement but was unable to effect such a payment. It appears that when Colonel O'Keefe was first contacted regarding this post it was believed by those concerned that Colonel O'Keefe would be placed upon the civilian payroll of the District of Columbia National Guard which would compensate him as adjutant general. However, inasmuch as Brigadier General Abendroth requested permission to place Colonel O'Keefe upon the civilian payroll, such request being submitted to the District of Columbia Commissioners, and such request being denied, it then appeared that there was no possibility of Colonel O'Keefe receiving compensation through this channel. In view of that fact and after prolonged conferences and negotiations, the National Guard Bureau of the Department of the Army on December 14, 1949, ordered Colonel O'Keefe on to active-duty pay and he received compensation as active-duty pay for the remainder of his term as adjutant general.

This second assignment is contained in a letter from the National Guard Bureau to the adjutant general of the District of Columbia National Guard dated December 12, 1949, paragraph 1, which states:

> By authority of the Secretary of the Army, you are authorized to issue the necessary orders for the attendance of Col. John A. O'Keefe, O277514 at the School of Organization, National Guard Bureau, Washington, D. C., reporting on or about December 14, 1949, for period of approximately 90 days.

Evidence in the files clearly indicates that Colonel O'Keefe did in fact serve as the adjutant general for the District of Columbia National Guard for the period above-mentioned inasmuch as all orders issuing from that office during this period were authenticated by him and the statements of people associated with the National Guard at that time bear this out.

The committee feels that Col. John O'Keefe undertook to perform services for the District of Columbia National Guard in the office of adjutant general during the aforementioned period in good faith and upon an understanding that he would receive compensation for said service.

The committee also feels that inasmuch as no appropriation had been provided for the National Guard to pay the salary of the adjutant general and inasmuch as conditions precluded the placing of Colonel O'Keefe on the civilian payroll of the National Guard of the District of Columbia, the only way which Colonel O'Keefe may be granted relief is through a private bill.

In view of the fact that Colonel O'Keefe did serve and render valuable service to the National Guard of the District of Columbia in good faith and in further view of the fact that such services were not compensated for by any other means during this period, the committee is constrained to believe that Colonel O'Keefe should be awarded compensation for this period and that this bill be favorably recommended.

Attached hereto is the report of the adjutant general of the District of Columbia National Guard and a report from the National Guard Bureau and other correspondence containing pertinent information regarding this claim.

HEADQUARTERS,
DISTRICT OF COLUMBIA NATIONAL GUARD,
Washington, D. C., January 31, 1956.

Hon. HARLEY M. KILGORE,
Chairman, Senate Committee on the Judiciary,
Senate Office Building, Washington, D. C.

DEAR SENATOR KILGORE: In reference to your letter of January 25, 1956, the following comment on S. 2984, 84th Congress, 2d session, a bill for the relief of Col. John A. O'Keefe is made.

Although Colonel O'Keefe was adjutant general of the District of Columbia National Guard during the period October 10, 1949, to December 13, 1949, he did not take an oath of office as a civilian employee as funds for the payment of the Adjutant General were never authorized in the District of Columbia National Guard budget. A request, including this position, was submitted to the District Commissioners but was not approved by them, hence no authority existed

for placing Colonel O'Keefe on the District of Columbia National Guard civilian payroll. In view of this, Colonel O'Keefe was placed on active duty for training by the National Guard Bureau of the Department of the Army on December 14, 1949, and received active-duty pay from the Army for the balance of his time as adjutant general. When Colonel O'Keefe came to the District of Columbia National Guard as adjutant general, it was understood by he and Maj. Gen. W. H. Abendroth, commanding general, District of Columbia National Guard, that there was no current authorization for payment of the adjutant general as a civilian employee.

For your information, I am enclosing copies of the previous correspondence of record in this office concerning this matter.

Sincerely,

DEAN E. COONLEY,
Colonel, Infantry,
The Adjutant General.

BETHESDA, MD., *September 8, 1955.*

The District Commissioners, District of Columbia, Washington, D. C.

GENTLEMEN: I respectfully request your earnest consideration of my claim for salary as adjutant general of the District of Columbia National Guard for the period of October 10 through December 13, 1949, and submit the following:

"In 1949, when it was decided to relieve the commanding general and the adjutant general of the District of Columbia National Guard, I was chosen as the new adjutant general and was ordered before the Board for Federal recognition in the grade of colonel with specific appointment in that capacity. The officer, whom I relieved, served in the grade of colonel with pay and allowances of that grade.

"I met the Board on August 25, 1949, and passed it, but due to the usual delay in processing matters of this kind, the action was not concluded until October 9, 1949, and I assumed the actual position of the adjutant general, District of Columbia National Guard, on October 10, 1949, on a full-time working basis.

"During the period of processing my Federal recognition for this position, I was informed by the commanding general of the District of Columbia National Guard that it had been decided that the general would be placed on active Federal service and that I would be paid from District of Columbia funds, to which I agreed.

"After taking over the office I went into the question of funds of the District of Columbia to pay my salary but was informed by those handling these funds for the guard that there were none available for such purpose. I held many, many conferences with these officers over a period of several months to work out a satisfactory arrangement but to no avail.

"The task of reorganizing the adjutant general's office was a tremendous one and I was on the job from early morning until the end of the day every day working diligently to get things straightened out; all of this with no pay.

"After 2 months of this somewhat impossible situation, and through conferences with the commanding general, the National Guard

Bureau, and officials of the Department of Defense, I was ordered to duty with the National Guard Bureau, effective December 14, 1949. Records of the District of Columbia Guard will, I am sure, reveal my appointment, the date I commenced signing orders for the District of Columbia National Guard and other facts in connection with my service."

In view of the above I feel justified in asking that I be reimbursed for the period of October 10 through December 13, 1949, at the rate of pay and allowances of colonel with the longevity I had at that time.

Several conferences have been held on this subject with officials of the District of Columbia Government, the commanding general and adjutant general of the guard during the past 3 years.

I have been informed that the District of Columbia National Guard turned back to the Treasury $400 in 1950 and $13,000 in 1951 (when much of the guard was ordered to service during the Korean war).

Respectfully,

JOHN A. O'KEEFE,
Colonel (Retired) 0277514.

ACCOUNTING OFFICE, DISTRICT OF COLUMBIA,
September 13, 1955.

To Commanding General, District of Columbia National Guard

The Commissioners have referrred to me a letter received by them from John A. O'Keefe, Colonel (retired) dated September 8, 1955, making claim for payment for services rendered the National Guard during the period October 10 through December 13, 1949, while serving in the capacity of adjutant general, District of Columbia National Guard. The letter has been referred to me for consideration presumably on the basis of submitting an audited claim for payment to Colonel O'Keefe.

I would appreciate it if you would cause your records to be searched and submit to me any information you may have relating to this subject. I think it would be helpful if you would submit a copy of the order of appointment, the taking of the prescribed oath of office, whether it be national or local, a statement as to the period of time covered by these services and any other pertinent information upon which we can make a determination of the claim for inclusion in the next supplemental appropriation for the fiscal year 1950.

According to our records, the unexpended balance in the local appropriation of $90,700 for 1950 was $3,147.62.

I have recently received a call from Mr. Bill Fontaine, in Senator Stennis' office, making inquiry concerning this claim. I told him in effect, over the telephone, that the records relating to this claim are probably in your office since we had little or nothing on the subject.

Kindest personal regards, I am

A. R. PILKERTON,
Accounting Officer, District of Columbia.

SEPTEMBER 29, 1955.

Mr. A. R. PILKERTON,
Accounting Officer, District of Columbia
Municipal Center, Washington, D. C.

DEAR MR. PILKERTON: Reference is made to your letter of September 13, concerning the claims submitted to the District Commissioners in letter of September 8, 1955, by Col. John A. O'Keefe for service rendered the District of Columbia National Guard during the period October 10 through December 13, 1949, while serving as adjutant general of the District of Columbia National Guard.

Although Colonel O'Keefe was adjutant general of the District of Columbia National Guard during this period, he did not take an oath of office as a civilian employee as funds for the payment of the adjutant general were never authorized in the District of Columbia National Guard budget requests. A request, including this position, was submitted to the District Commissioners but was not approved by them, hence I had no authority to place him on the District of Columbia National Guard civilian payroll. In view of this fact, Colonel O'Keefe was placed on active duty for training by the National Guard Bureau of the Department of the Army on December 14, 1949, and received active-duty pay from the Army for the balance of his tour as adjutant general.

When Colonel O'Keefe came to the District of Columbia National Guard as adjutant general it was understood that there was no current authorization for payment as a civilian employee.

I have discussed this matter with Mr. Bill Fontaine, of Senator Stennis' office, and explained the circumstances to him.

Yours truly,

W. H. ARENDROTH,
Major General, Commanding.

DEPARTMENTS OF THE ARMY AND THE AIR FORCE,
NATIONAL GUARD BUREAU,
Washington, D. C., February 6, 1956.

Hon. HARLEY M. KILGORE,
Chairman, Committee on Judiciary,
United States Senate

DEAR MR. CHAIRMAN: This is in reply to your request for a report on S. 2984, for the relief of Col. John A. O'Keefe, introduced by Mr. Stennis. The bill, if enacted, would authorize and direct the Secretary of the Treasury to pay, out of money in the Treasury not otherwise appropriated, the sum of $1,653 in full satisfaction of all claims of John A. O'Keefe against the United States for compensation for the services performed by him as adjutant general of the District of Columbia National Guard in the grade of colonel for the period from October 10 to December 13, 1949.

The National Guard Bureau does not have jurisdiction in the assignment or payment of the adjutant general of the District of Columbia National Guard. However, the following documents which may be pertinent to consideration of this bill are contained in the records of the National Guard Bureau:

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(*a*) Special Orders 151 issued by Headquarters, District of Columbia National Guard, Washington, D. C., dated August 25, 1949, by command of Brig. General Abendroth, paragraph 1 of which states as follows:

"The appointment and assignment of the following-named officer, in the Adjutants General Department, District of Columbia National Guard is announced, effective this date:

Headquarters, District of Columbia National Guard	*Position*
Col. John A. O'Keefe O277514 AGD	The Adjutant General MOS 2110."

(*b*) National Guard Bureau form 3A, issued by the National Guard Bureau September 30, 1949, which is the official notice of Federal recognition and states as follows:

"John Aloysius O'Keefe having qualified, under sections 74 and 75, National Defense Act, is, by direction of the Secretary of the Army, extended Federal recognition in the National Guard of the District of Columbia as colonel (par 6d NGR 15), Adjutant General's Department, Adjutant General, District of Columbia National Guard, to date from August 25, 1949, vice Nevitt, reassigned."

(*c*) A letter from the National Guard Bureau to the adjutant general of the District of Columbia National Guard, Washington, D. C., dated December 12, 1949, paragraph 1 of which states:

"By authority of the Secretary of the Army, you are authorized to issue the necessary orders for the attendance of Col. John A. O'Keefe O277514 at the School of Organization, National Guard Bureau, Washington, D. C., reporting on or about December 14, 1949, for period of approximately 90 days."

According to copies on file, general orders and special orders issued by Headquarters, District of Columbia National Guard, during the period referred to in the bill, beginning with General Orders No. 37 dated October 10, 1949, were authenticated by Colonel O'Keefe, which is evidence that he did in fact serve as the adjutant general, District of Columbia National Guard, during that period. The National Guard Bureau perceives no reason to object to this bill. It is repeated, however, that the National Guard Bureau has no jurisdiction in the matter of assignment or payment of the adjutant general of the District of Columbia National Guard. In that connection, reference is made to title 39, sections 202, 204, District of Columbia Code.

Sincerely,

WINSTON P. WILSON,
Major General,
Deputy Chief, National Guard Bureau.

DEPUTY DIRECTOR OF SELECTIVE SERVICE,
Washington, D. C., February 1, 1956.

Col. JOHN A. O'KEEFE,
Bethesda, Md.

MY DEAR COLONEL: I have reviewed your situation regarding the amount due you for your services as adjutant general of the District of Columbia National Guard during the period from October 10

through December 13, 1949, and I recall the situation which occurred at the time of this appointment.

It is my recollection that you accepted this appointment in good faith and with the assurance that the financial part of it would be arranged by the District of Columbia and carried out your responsibilities under this agreement.

I am now advised that Senator Stennis, of your own State, has introduced a bill (S. 2985) to obtain the compensation which is due you for your services between the dates above given in this letter.

I was Assistant to the Secretary of Defense, as you remember, at the time your appointment was made, and because of the situation that arose over General Abendroth, there was some confusion at that time as to whether or not he would come on active duty as adjutant general of the District Guard or would be in command of the Guard as a civilian. The decision was finally rendered that he would come on active duty, but in this interim period, you had been giving your services as the adjutant general of the District without compensation.

I note in the correspondence that General Abendroth admits that this amount is due you, but that there was no provision in the budget to take care of it at this time.

I trust this letter will assist you in securing the amount due you and in clearing up the situation that now exists as to this long overdue account.

Sincerely,

LOUIS H. RENFROW,
Brigadier General, United States Army,
Deputy Director.

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Calendar No. 1857

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1834

JOSEPH AND MARJORIE RIGHETTI

APRIL 24, 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H R. 1470]

The Committee on the Judiciary, to which was referred the bill (H. R. 1470) for the relief of Joseph Righetti and Marjorie Righetti, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to relieve Joseph Righetti and Marjorie Righetti, of Santa Rosa, Calif., of all liability to refund to the United States the sum of $557.40. Such sum represents the amount of certain payments erroneously made by the Veterans' Administration to Joseph Righetti and Marjorie Righetti under the Servicemen's Indemnity Act of 1951, by reason of the death of their son, James Chatelain.

STATEMENT

The serviceman, James Chatelain, entered active service in the United States Marine Corps on July 15, 1952. The Marine Corps furnished the Veterans' Administration a report of death indicating that the serviceman had died in service on December 3, 1952, as the result of apparent suicide.

Based upon this report, the Veterans' Administration released letters to Marjorie M. Righetti, mother, and Joseph F. Righetti, stepfather, informing them of their possible entitlement to servicemen's indemnity of $5,000, each, and enclosing appropriate claim forms. They subsequently filed claims and, based upon the evidence then of record, the Veterans' Administration authorized settlement in

their favor in the amount of $46.45 monthly, each, commencing with the first installment due December 3, 1952, and to continue for 120 such payments, ending with the final installment to become due November 3, 1962.

On May 12, 1953, the Veterans' Administration received a supplementary report of death from the service department indicating that the serviceman was in a desertion status at the time of death. Under a provision of section 8 of the Servicemen's Indemnity Act of 1951 (65 Stat. 35) that any person guilty of desertion shall forfeit all rights to an indemnity, payments of the indemnity in this case were terminated effective as of the date of commencement. By letter dated May 29, 1953, the parents were advised of this action and of their right to appeal to the Administrator of Veterans' Affairs within 1 year from the date of that letter. There is no record that such an appeal was filed.

The action of termination of indemnity payments created overpayments of $278.70 to each parent, totaling $557.40, and they were requested to make repayment. Upon application for waiver of recovery of these amounts, the parents were informed to the effect that the Veterans' Administration is without authority under the statute to waive recovery of overpayments of servicemen's indemnity.

The Veterans' Administration, in reporting to this committee on the proposed legislation, states that, in view of the circumstances in this case, the Veterans' Administration believes that favorable consideration of the bill is justified.

The committee is constrained to agree with the Veterans' Administration that this claim be favorably considered, not only because of the circumstances under which the payments were made to the parents in the belief that they were justly entitled to these benefits, but the committee also notes, from an affidavit filed with the committee, that it would place an undue hardship upon these two persons to make restitution of the money paid to them through administrative error. Accordingly, the committee recommends that this bill, H. R. 1470, be favorably considered.

Attached hereto and made a part hereof is a report submitted by the Veterans' Administration to the Chairman of the House Judiciary Committee on the instant bill; a report submitted to this committee by the Department of the Navy, and the aforementioned affidavit.

VETERANS' ADMINISTRATION,
Washington, D. C., April 19, 1955.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR MR. CELLER: This has further reference to your request for a report by the Veterans' Administration on H. R. 1470, 84th Congress, a bill for the relief of Joseph Righetti and Marjorie Righetti, which provides as follows:

"That Joseph Righetti and Marjorie Righetti, of Santa Rosa, Calif., are hereby relieved of all liability to refund to the United States the sum of $557.40. Such sum represents the amount of certain payments erroneously made by the Veterans' Administration to Joseph Righetti and Marjorie Righetti under the Servicemen's Indemnity Act of 1951, by reason of the death of their son, James Chatelain. In the audit and settlement of the accounts of any certifying or disbursing officer of the United States, full credit shall be given for the amount for which liability is relieved by this Act."

The serviceman, James Chatelain, XC-17,079,497, entered active service in the United States Marine Corps on July 15, 1952. The Marine Corps furnished the Veterans' Administration a report of death indicating that the serviceman had died in service on December 3, 1952, as the result of apparent suicide.

Based upon this report, the Veterans' Administration released letters to Marjorie M. Righetti, mother, and Joseph F. Righetti, stepfather, informing them of their possible entitlement to servicemen's indemnity of $5,000, each, and enclosing appropriate claim forms. They subsequently filed claims, and based upon the evidence then of record the Veterans' Administration authorized settlement in their favor in the amount of $46.45 monthly, each, commencing with the first installment due December 3, 1952, and to continue for 120 such payments ending with the final installment to become due November 3, 1962.

On May 12, 1953, the Veterans' Administration received a supplementary report of death from the service department indicating that the serviceman was in a desertion status at the time of death. Under a provision of section 8 of the Servicemen's Indemnity Act of 1951 (65 Stat. 35; 38 U. S. C. 857), that any person guilty of desertion shall forfeit all rights to an indemnity, payments of the indemnity in this case were terminated effective as of the date of commencement. By letter dated May 29, 1953, the parents were advised of this action and of their right to appeal to the Administrator of Veterans' Affairs within 1 year from the date of that letter. There is no record that such an appeal was filed.

The mentioned action of termination of indemnity payments created overpayments of $278.70 to each parent, totaling $557.40, and they were requested to make repayment. Upon application for waiver of recovery of these amounts, the parents were informed to the effect that the Veterans' Administration is without authority under the mentioned act to waive recovery of overpayments of servicemen's indemnity.

Considering the circumstances in this case the Veterans' Administration believes that favorable consideration of the bill is justified.

Advice has been received from the Bureau of the Budget that there would be no objection to the submission of this report to your committee.

Sincerely yours,

JOHN S. PATTERSON
(For H. V. Higley, Administrator).

AFFIDAVIT

COUNTY OF SONOMA,
State of California:

We, Marjorie Righetti and Joseph F. Righetti, mother and stepfather of James Chatelain, deceased, hereby certify that the following statements are true and correct to the best of our knowledge and belief:

While absent without leave from the United States Marine Corps, Camp Pendleton, Calif., our son James Chatelain took his own life.

The United States Marine Corps took charge of the body and shipped it to San Francisco where it was held for 14 days awaiting orders from Camp Pendleton. Permission was then granted to bury our son in the National Cemetery, San Bruno, Calif. We did not make application for any benefits or gratuity insurance until the representatives of the United States Marine Corps contacted us and told us we were eligible. The back pay was given to us but the 6 months' gratuity pay was denied.

The Veterans' Administration sent us the forms to apply for the indemnity insurance and awarded us $5,000 each, payable monthly from December 3, 1952. This was paid us to June 3, 1953, and amounted to $278.70 each. On June 18, 1953, we were notified by the Veterans' Administration that we were not entitled to the gratuity insurance as the veteran was in a deserter status at time of death. They asked us to return the money they had paid us at once.

We had used part of the money to pay for our son's funeral expenses which had not been covered by the United States Marine Corps allowance. We did not have the cash to repay the claimed overpayment of $278.70 each and as our only income was and still is, from a monthly salary which is hardly adequate to support us and our son, who is still in school, we cannot make monthly payments to return the money.

We were denied a waiver of repayment by the committee on waivers for the reason, they state, that they do not have jurisdiction on overpayment of servicemen's indemnity awards.

Mrs. Marjorie Righetti,
Mr. Joseph F. Righetti,
774 Brittain Lane, Santa Rosa, Calif.

Subscribed and sworn to before me this 27th day of April 1955.

Leo V. Connolly, *Notary Public.*

My commission expires January 15, 1957.

Department of the Navy,
Office of the Judge Advocate General,
Washington, D. C., February 27, 1956.

Hon. Harley M. Kilgore,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

My Dear Mr. Chairman: Reference is made to your letter of November 28, 1955, to the Secretary of the Navy requesting comment on H. R. 1470, an act for the relief of Joseph Righetti and Marjorie Righetti.

The purpose of this measure is to relieve the mother and stepfather of James Chatelain from liability to refund to the United States the sum of $557.40, which has been paid to them by the Veterans' Administration as part of a servicemen's indemnity to which they were believed entitled.

The serviceman, James Chatelain, entered active service in the United States Marine Corps on July 15, 1952, and died on December 3, 1952, as the result of apparent suicide. Mr. and Mrs. Righetti filed claims with respect to their entitlement to servicemen's indemnity of $5,000 each, and settlement was authorized in their favor in the amount of $46.45 monthly, each, commencing with the first installment due December 3, 1952, and to continue for 120 such payments.

It was subsequently determined that the serviceman was in a desertion status at the time of death. Pursuant to a provision of section 8 of the Servicemen's Indemnity Act of 1951 (65 Stat. 35, 38 U. S. C. 875) that any person guilty of desertion shall forfeit all rights to an indemnity, payments of the indemnity in this case were terminated and the parents were requested to make repayment.

This measure concerns benefits administered by the Veterans' Administration and is, therefore, of prime interest to that agency. Accordingly, subject to the remarks of the Veterans' Administration, to which this Department would defer, the Department of the Navy interposes no objection to the enactment of H. R. 1470.

The Department of the Navy has been advised by the Bureau of the Budget that there is no objection to the submission of this report on H. R. 1470 to the Congress.

Sincerely yours,

Ira H. Nunn,
Rear Admiral, United States Navy,
Judge Advocate General of the Navy.
(For the Secretary of the Navy).

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Calendar No. 1858

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1835

CHARLES F. BRICKELL

APRIL 24, 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 1500]

The Committee on the Judiciary, to which was referred the bill (H. R. 1500) for the relief of Charles F. Brickell, having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to pay the claimant the sum of $862.22 in full settlement of his claim against the United States for the loss of personal property in a fire in Telford's Warehouse, Sun Valley, Calif., on December 25, 1953, for which the claimant has not been heretofore compensated.

STATEMENT

The record before the committee shows that the claimant, Charles F. Brickell, of 2250 East Chapman, Fullerton, Calif., was on September 19, 1953, stationed at Fort Ord, Calif., as a second lieutenant, United States Army Reserve, Infantry, and was relieved from active duty effective September 30, 1953, by orders which directed him to proceed to his home at 306 Spurgeon Street, Santa Ana, Calif., on or about September 25, 1953. In accordance with these orders, the claimant's household effects were packed and crated by a Government contractor and were shipped from Monterey, Calif., on September 21, 1953, by North American Van Lines, Inc., also under a Government contract, destined for the claimant's home. The shipment, en route, was placed

by the carrier in intransit storage in Telford's Warehouse, Sun Valley, Calif., and while it was so stored it was completely destroyed by fire.

The claimant filed a claim with the North American Van Lines, Inc., and was reimbursed by the carrier to the extent of $194, the full recovery possible from the carrier on the basis of the value (1,940 pounds, at 10 cents per pound) placed on the shipment by the Army when it was released to the carrier.

The claimant also filed a claim with the Department of the Army in the amount of $4,335.71, representing the total of the individual values placed by the claimant upon the items destroyed, less the amount recovered from the carrier. Computation of the individual amounts by the Department of the Army indicated that the correct total should be $4,348.71.

The claim was considered by the Department of the Army under the provisions of the applicable general legislation, the Military Personnel Claims Act of 1945, as amended. The Department found, after an appraisal of the values of the items destroyed and after applying appropriate depreciation to the values, that the claimant had a reimbursable loss of $3,556.22, less the amount of $194 recovered from the carrier, or a net reimbursable loss of $3,362.22.

The applicable general legislation, the Military Personnel Claims Act of 1945, however, as amended on July 3, 1952, limits the amount which may be paid administratively to $2,500. This amount has been paid to the claimant, leaving the amount of $862.22, the amount set forth in the bill, to which the Department of the Army believes the claimant to be equitably entitled. There is no method by which the claimant can be paid this amount except by the enactment of private legislation.

The committee is not ordinarily disposed to approve private legislation for the payment of an additional amount where a claimant has had the benefit of payment under applicable general legislation. The committee, however, believes that the limitation of $2,500 in the Military Personnel Claims Act, as amended, is unrealistic, and the committee has favorably recommended general legislation to increase this limitation to $4,000 and to make this revised limitation retroactive. The committee has also, during the consideration of this revision of the general legislation, favorably recommended private legislation for the award of amounts up to the proposed new limitation for claimants situated similarly to the present claimant.

For these reasons the committee believes that the proposed legislation is meritorious and recommends it favorably.

A detailed schedule of the claimant's property which was destroyed, showing the month and year when each item was acquired, its purchase price, its condition when destroyed, and the value claimed, is on file with the committee.

Attached and made a part of this report is a letter, dated August 19, 1955, from the Secretary of the Army in regard to the proposed legislation as it was introduced. The proposed legislation as introduced was amended by the House of Representatives to make it conform to the recommendations of the Secretary of the Army.

DEPARTMENT OF THE ARMY,
Washington, D. C., August 19, 1955.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to your request to the Secretary of the Army for a report on H. R. 1500, 84th Congress, a bill for the relief of Charles F. Brickell.

The Department of the Army is opposed to the above-mentioned bill in its present form but would have no objection if it were amended as hereinafter recommended.

This bill provides as follows:

"That the Secretary of the Treasury be and he is hereby authorized and directed to pay out of any money in the Treasury not otherwise appropriated the sum $1,835.71 to Charles F. Brickell, of 2250 East Chapman, Fullerton, Calif. Said sum shall be in full settlement of all claims of the said Charles F. Brickell for personal property which was lost in a fire which occurred on December 25, 1953, at Telford's Warehouse in Sun Valley, Calif., for which he has not been heretofore compensated."

Records of the Department of the Army show that, on September 19, 1953, 2d Lt. Charles F. Brickell, O1882539, United States Army Reserve, Infantry, was stationed at Ford Ord, Calif. He was relieved from active duty effective September 30, 1953, by orders which directed him to proceed to his home at 306 Spurgeon Street, Santa Ana, Calif., on or about September 25, 1953. In accordance with these orders, Lieutenant Brickell's household effects, weighing 1,940 pounds, were packed and crated by a Government contractor and were shipped from Monterey, Calif., on September 21, 1953, by North American Van Lines, Inc., also under a Government contract, destined for Lieutenant Brickell at Santa Ana, Calif. En route to Santa Ana, the goods were placed by the carrier in intransit storage at a warehouse of Telford's Moving Service at Sun Valley, Calif., and while so stored were completely destroyed by fire.

Lieutenant Brickell filed a claim with North American Van Lines, Inc., and was reimbursed by the carrier to the extent of $194, representing the full released valuation of his property (1,940 pounds at 10 cents per pound). Lieutenant Brickell also filed a claim with the Department of the Army in the amount of $4,335.71, representing the total of the individual values placed by him upon the items destroyed, after deduction of the amount recovered from the carrier. Computation of such individual amounts in this Department indicates that the correct total should have been $4,348.71.

The claim was considered in this Department under the provisions of the Military Personnel Claims Act of 1945 (59 Stat. 225), as amended (31 U. S. C. 222c), which provided, pertinently, that—

> The Secretary of the Army and such other officer or officers as he may designate for such purposes and under such regulations, as he may prescribe, are hereby authorized to consider, ascertain, adjust, determine, settle and pay any claim not in excess of $2,500 against the United States * * * of military personnel * * * when such claim is substantiated, and the property determined to be reasonable, useful, necessary, or

> proper under the attendant circumstances, in such manner as the Secretary of the Army * * * may by regulation prescribe * * *.

As originally enacted the above act contained no maximum limitation on the amount which could be administratively awarded thereunder in a proper case. The limitation of $2,500 was added by the act of July 3, 1952 (66 Stat. 321).

Lieutenant Brickell's claim was adjudicated within this Department on the same basis as other claims of military personnel arising out of the loss of or damage to household effects. In the appraisal of the values of the 273 different items comprising the claim it was necessary to apply depreciation to the values claimed for many of the items, as the majority of them had been in use for several years. As finally appraised, it was determined that the items comprising the claim had a total value of $3,556.22. From this amount was deducted the $194 already received from the carrier, leaving the amount of $3,362.22, as the amount which would have been paid administratively, were it not for the monetary limitation placed on the Military Personnel Claims Act of 1945, supra, by the act of July 3, 1952, supra. Accordingly, Lieutenant Brickell's claim has been paid in the maximum amount of $2,500, leaving the amount of $862.22 to which he is equitably entitled but which he has not received. There is no way in which Lieutenant Brickell can be compensated for the remaining portion of his loss other than through the enactment of private relief legislation. The loss occurred incident to his service, while his household effects were bailed to the Government and without any fault or neglect on his part.

However, the amount which would be awarded by this bill is in excess of that in which his claim was determined meritorious by this Department. Approval of the bill in such an amount would discriminate against other persons in similar circumstances and would reimburse Lieutenant Brickell in a greater amount than that to which he equitably is entitled. Accordingly, it is recommended that the amount, $1,835.71, stated on line 5 of the bill be stricken and that the amount, $862.22, be substituted therefor. In the event that the bill is so amended the Department of the Army would have no objection thereto.

The cost of this bill, if enacted in its present form, would be $1,835.71. If it is amended as herein recommended, the cost would be $862.22.

The Bureau of the Budget advises that it has no objection to the submission of this report.

Sincerely yours,

WILBER M. BRUCKER,
Secretary of the Army.

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Calendar No. 1859

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1836

BERNARD L. DENN

APRIL 24, 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 2465]

The Committee on the Judiciary, to which was referred the bill (H. R. 2465) for the relief of Bernard L. Denn, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to authorize and direct the Secretary of the Treasury to pay, out of any money in the treasury not otherwise appropriated, to Bernard L. Denn, of Portland, Oreg., the sum of $2,443.57, in full settlement of the claim of the said Bernard L. Denn, an employee of Bonneville Power Administration, Department of the Interior, against the United States for retroactive pay adjustment to reimburse him for loss resulting from administrative error.

STATEMENT

The report of the Department of the Interior indicates that on June 26, 1947, claimant was offered a position as clearing inspector, CPC–8, by the Bonneville Power Administration, at a salary of $3,522.60 per annum, effective July 27, 1947. The claimant was offered this position because of his previous employment by this authority as a substation operator and consequently acquiring a retention preference. It appears that on June 30, 1947, claimant notified the Personnel Director of the Bonneville Power Administration of his acceptance of the foregoing offer. However, on July 6, 1947, Mr. Denn was transferred from substation operator at $1.705 per hour to clearing inspector, CPC–8, $2,895.60 per annum. The employment of the claimant by the Bonneville Power Administration

was continued at $2,895.60 per annum until June 19, 1954. For this period of time Mr. Denn should have been paid $30,835.58, at the rate of $3,522.60 per annum, but instead he was paid $28,392.01, at the rate of $2,895.60 per annum. The difference for this period of time amounts to $2,443.57, the amount provided for in the bill.

The Department of the Interior recommends enactment of the bill, and states that since Mr. Denn was offered a transfer in writing to the position of clearing inspector, CPC–8, at the rate of $3,522.60 per annum on June 26, 1947, and accepted the offer on June 30, 6 days before the action effectuated at the rate of $2,895.60 per annum, the Department is of the opinion that, in the interest of equity, the transfer should have been effectuated at the rate of $3,522.60 per annum, rather than at the rate of $2,895.60 per annum.

After consideration of the facts and circumstances in connection with this claim and in the light of the favorable recommendation of the Department of the Interior, the committee is of the opinion that this claim is meritorious and, therefore, recommends that the bill, H. R. 2465, be considered favorably.

Attached hereto and made a part hereof is the report of the Department of the Interior, above referred to, together with an affidavit executed by the claimant in support of his claim.

UNITED STATES DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D. C., July 13, 1955.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

MY DEAR MR. CELLER: In accordance with your request of June 1, 1955, a study has been made of H. R. 2465, a bill for the relief of Bernard L. Denn.

In the spring of 1947 Mr. Denn was employed by the Bonneville Power Administration, Portland, Oreg., as a substation operator in an ungraded position at the rate of $1.705 per hour. Shortly thereafter, two entirely separate courses of personnel action developed concurrently, each of which took no notice of the other. One was the normal filing of a position by selection of an employee from a register of eligibles. The other was a reduction in force which was occasioned by the severe curtailment of the Bonneville Power Administration funds for fiscal year 1948. The following discloses the nature and timing of the pertinent events in the two courses of action:

April 7, 1947: Promotional vacancy examination announced.

May 10, 1947: Mr. Denn executed form 57 applying for the examination and listed the lowest acceptable entrance salary at $2,895.

May 17, 1947: Examination held.

May 21, 1947: Mr. Denn was certified with 3 other applicants who had passed the examination, in response to a requisition for a clearing inspector, CPC–8, at $2,895.60 per annum on the construction force.

June 2, 1947: Mr. Denn was selected for the position by the Chief of Engineering and Construction Division.

June 26, 1947: 30–day termination notice was sent to Mr. Denn indicating his position would be eliminated by July 26 but offering him, because of his retention preference, a position of clearing inspector, CPC–8, at $3,522.60 per annum, effective July 27, 1947.

June 30, 1947: Mr. Denn notified personnel director of his acceptance of the foregoing offer.

July 6, 1947: Formal action, on standard form 50, transferred Mr. Denn from substation operator at $1.705 per hour to clearing inspector, CPC–8, $2,895.60 per annum. This action specifically states: "You applied for this position under promotional examination No. 17."

The reduction-in-force action which was initiated on June 26, 1947, was never completed, as Mr. Denn was appointed on July 6 on the basis of the application

which he had submitted and the examination which he had taken in May. His appointment on July 6, therefore, was at the rate of $2,895.60 per annum, rather than at the rate of $3,522.60 per annum which he would have received if the reduction-in-force action had been processed.

However, since Mr. Denn was offered a transfer in writing to the position of clearing inspector, CPC–8, at the rate of $3,522.60 per annum on June 26, 1947, and accepted the offer on June 30, 6 days before the action was effectuated at the rate of $2,895.60 per annum, this Department is of the opinion that, in the interest of equity, the transfer should have been effectuated at the rate of $3,522.60 per annum rather than at the rate of $2,895.60 per annum. There is, in other words, considerable equity in Mr. Denn's claim.

The amount of the claim is $2,443.57 and is arrived at as follows:

Dates	Rate	Hours	Regular pay	Overtime
July 6 to 12, 1947	$3,522.60	40	$67.74	
July 13, 1947, to Apr. 3, 1948		1,534	2,574.12	$28.64
Apr. 4 to July 10, 1948	3,648.00	592	982.10	64.84
July 11, 1948, to July 9, 1949	3,978.00	2,391	3,978.00	611.06
July 10 to Oct. 29, 1949	4,103.40	713	1,262.56	141.74
Oct. 30, 1949, to Apr. 15, 1950	4,200.00	2,403	1,938.48	
Apr. 16, 1950, to July 7, 1951	4,200.00	2,567	5,169.28	29.60
July 8, 1951, to June 19, 1954	4,545.00	6,504	13,635.18	352.24

Salary that should have been paid	$30,835.58
Salary that was paid	28,392.01
Total	2,443.57

In view of the above, it is recommended that H. R. 2465 be enacted.

The Bureau of the Budget has advised that there would be no objection to the submission of this report to your committee.

Sincerely yours,

FRED G. AANDAHL,
Assistant Secretary of the Interior.

STATE OF OREGON,
County of Multonomah, ss:

I, Bernard L. Denn, of 7008 North Greenwich Avenue, Portland 17, Oreg., being first duly sworn, hereby state the facts leading up to my request for an adjustment in pay from July 6, 1947, at which time I was assigned to a job as clearing inspector CPC–8, which I had accepted at a salary of $3,522.60 per annum. The salary at which I was paid was $2,895.60.

Early in 1942 I started with Bonneville Power Administration as a journeyman lineman on construction. After I worked at that job for about a year, the BPA Chief of Substations asked me to go to work in operations. Because I wanted to work in the Portland area, I started as apprentice operator, though it meant a decrease of more than $4 a day in wages. I had to take part-time work in addition to make a living for my family. After serving a 3-year apprenticeship I was advanced to journeyman operator.

During a reduction in force in June 1947, I was advised that my services would not be needed as an operator after July 26, 1947, and I was offered the job as clearing inspector, CPC–8, at $3,522.60 per annum, which I accepted.

I went to Vancouver to sign up for the new job, but noticed the salary specified on the papers was less than the one at which I had accepted. The clerk called personnel and stated that I was correct in saying I had accepted at $3,522.60. I suggested to the Chief of Construction that I go to the Portland personnel office to straighten it out. The Chief suggested that I go on to Montana because they needed me there, and the Vancouver office would straighten out the salary matter. I usually do what my superiors request, so I went to Montana without going over the Chief's head, directly to personnel.

About 2 months later when I started getting my checks at the lower figure (it took them that long to catch up with me) I wrote the Chief from Montana. He replied that he had changed his mind, and was not going to hire at the salary at which I had accepted.

After returning to the Portland area the end of the year, I made numerous trips to the personnel office in an effort to have the matter straightened out, but

was never successful in seeing anyone who could help me. I was always told they were out, or busy. About a year and a half after taking the job, I showed the Chief of Construction the duplicate of my acceptance. He told me he was sorry, and that he did not know I had accepted the job at that salary. He told me I could go as far as I wanted to in personnel to get justice.

My wife was critically ill and hospitalized much of the time, so I could not afford to take time off the job to follow the matter through, but I tried to see the Director of Personnel at every opportunity, to no avail.

In 1949 Mr. W. L. Johnson, Chief, Branch of Employment, listened to my story and promised to write and tell me why my salary had been cut. I have his letter, which did not answer the question.

Later in 1949 Mr. Marlett, the Assistant Administrator, looked at my papers and said it would be difficult, but not impossible, to raise me to where I should have been; that he would take care of it and write me. I never heard from him.

After exhausting every other means open to me, I was granted a hearing February 4, 1954; during the hearing it was stated that "Mr. Denn was reassigned as a result of his response to a vacancy announcement dated April 28, 1947, to a position of clearing inspector, CPC–8, $2,895.60 per annum. This action was effective July 6, 1947." The fact remains that the job I accepted was the position offered me, clearing inspector CPC–8, at $3,522.60 per annum, in the Engineering and Construction Division. When I signed up and went to Montana, and asked the Chief's permission to get the matter straightened out at Personnel before leaving, I stated that I would not accept the job at the salary of $2,895.60.

In the years that I have worked for the Department of the Interior it has always been my understanding that employees were not required to take a decrease in salary when assigned to a new job.

At the end of the hearing in February 1954, I was told that nothing could be done by Bonneville Power Administration to alter my salary. I earnestly hope the Congress of the United States will correct the injustice that has been done me.

The above are true statements of fact. I have information to substantiate everything I have said. I will be most grateful for the consideration given me.

Respectfully,

BERNARD L. DENN.

Subscribed and sworn to before me at Portland, Oreg., this 15th day of July 1955.

[SEAL] ALICE SIECKE, *Notary Public.*

My commission expires March 17, 1958.

○

Calendar No. 1860

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1837

JOSEPH GANGEMI AND ANTHONY GANGEMI

APRIL 24, 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 4852]

The Committee on the Judiciary, to which was referred the bill (H. R. 4852) for the relief of Joseph Gangemi and Anthony Gangemi, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to pay Joseph Gangemi and Anthony Gangemi, of Philadelphia, Pa., the sum of $956, in full settlement of all claims arising out of a collision between a Navy ambulance and an automobile operated by Joseph Gangemi and owned by Anthony Gangemi.

STATEMENT

The collision between the Navy ambulance and the Gangemi vehicle occurred on June 21, 1949. At about 1:30 in the afternoon of that day a Pontiac sedan driven by Joseph Gangemi was proceeding at a speed of about 15 miles per hour east on Moyamensing Avenue in Philadelphia near the point where that avenue intersects 12th Street. At the same time a Navy ambulance was approaching the intersection at a high rate of speed on 12th Street. Joseph Gangemi stated that he did not hear any siren and was well into the intersection before he was aware of the approaching ambulance. The Gangemi vehicle was struck on the right side, and damaged to the extent of $156. In addition Joseph Gangemi suffered injuries which are described in his affidavit and doctor's report and are attached hereto and made a part of this report.

Joseph Gangemi and Anthony Gangemi through their attorneys attempted to settle with the Navy under administrative procedures. After extensive negotiations the claimants agreed to reduce their claim to $1,000 in order to bring the claim within the limits of the law relating to administrative settlements. However at that point the Navy wrote the claimants' attorneys that the statute of limitations had run and that the Government was no longer liable since the claim was barred, The claimants had relied on the fact that they had taken affirmative action under the law in filing their claim as being sufficient to stop the running of the statute as to such administrative proceedings.

The Department of the Navy, in a letter to the chairman of the House Judiciary Committee dated September 11, 1952, opposes enactment of this bill, on the theory of contributory negligence on the part of Joseph Gangemi, and states as follows:

At the time of the collision Joseph Gangemi, according to his statement, was on an errand for his son. His version of the accident is that "* * * while driving through the intersection at 12th and Porter Streets with a green light in my favor at a speed of 10 miles per hour I saw a naval ambulance going east on Moyamensing Avenue. The first time I saw the ambulance I was entering the intersection and the ambulance was about 150 feet from the corner, and as I crossed and watched the ambulance it was coming very fast and struck my car at the right rear door and fender."

Section 574 (a) of title 75, Purdon's Pennsylvania Statutes, provides, in effect, that upon the approach of an ambulance giving audible signal, every other vehicle shall immediately drive to the right-hand curb, clear of any intersection, stop, and remain there until the ambulance has passed. It would appear, therefore, that through his failure to obey this traffic law, as evidence by his own admission, Joseph Gangemi was guilty of contributory negligence as a matter of law. Since he was the agent of his son Anthony and not a bailee, his contributory negligence is imputable to his son and therefore would prevent a recovery by Anthony Gangemi for damage to his automobile. The Department of the Navy, therefore, denies liability for both the personal injuries to Joseph Gangemi and for the property injury to Anthony Gangemi's 1948 Pontiac sedan.

However, the committee desires to point out that the driver, Joseph Gangemi, had already entered the intersection when he first became aware of the Navy vehicle and, therefore, had no opportunity to "drive to the right-hand curb, clear of any intersection, stop, and remain there until the ambulance has passed." Insofar as the facts disclose, a clear showing of contributory negligence is not found.

As noted in the physician's report, Mr. Gangemi's injuries appear to be of a continuing nature.

It is to be noted that the claimants have in good faith attempted to settle their claims with the Navy Department, through extensive negotiations. They further reduced the amount of their claims to the present stipulated sum of $950, at which time the Navy Department wrote the claimants' attorneys that the statute of limitations had run. Inasmuch as the claimants proceeded in good faith in the prosecution of their claims and agreed to the reduced amount, while under the impression that their positive action of negotiation stayed the running of the statute of limitations, the committee is of the opinion that it would be inequitable to now deny them relief. Therefore, after consideration of all the facts submitted in connection with this matter, the committee recommends favorable consideration of the bill, H. R. 4852.

Correspondence contained in the committee files indicates that there has been an attorney participating in this case and that he has performed substantial services therein. Therefore, the proviso limiting attorney's fees to 10 percent has been retained.

Attached hereto and made a part hereof is the letter from the Department of the Navy of September 11, 1952, hereinbefore referred to, and certain evidentiary data as to damages sustained as a result of this collision.

AFFIDAVIT

STATE OF PENNSYLVANIA:
County of Philadelphia, ss:

Joseph Gangemi, being duly sworn according to law, deposes and says:

1. That he is the Joseph Gangemi referred to in private bill H. R. 7926 introduced on February 16, 1954.

2. That he sustained the following injuries as a result of the collision referred to in the same said bill:

(*a*) Concussion of brain.
(*b*) Sprain of back.
(*c*) Nervous shock.
(*d*) Contusion of right knee.

There is attached hereto, made part hereof, and marked "Exhibit A" a copy of the physician's report setting forth the injuries, treatment, history, and prognosis.

That there is also attached hereto and made part hereof and marked "Exhibit B" the bill of the said Dr. Anthony Nicolo in the sum of $89.

That there is attached hereto, made part hereof, and marked "Exhibit C" the original receipt from the Methodist Episcopal Hospital showing payment of bill for X-rays in the sum of $25.

JOSEPH GANGEMI.

Sworn to and subscribed before me this 5th day of March, A. D. 1954:

[SEAL] JOHN A. MERLINO,
Notary Public.

My commission expires April 20, 1957.

EXHIBIT A

PHYSICIAN'S REPORT

Name of patient: Joseph Gangemi.
Address: 1601 Packer Avenue.
City and state: Philadelphia, Pa.
Occupation: Unemployed.
Telephone: DE 4-2472.
Age: 55, married.
Date of first examination: June 22, 1949.
Evidence of:
Old injuries: None.
Of disease: None.
Of intoxication: None.
Patient received first aid or other prior treatment for this injury from Methodist Episcopal Hospital.

PATIENT'S ACCOUNT OF INJURY

Date and hour of injury: June 21, 1949, at 2 p. m.
Place and manner of occurrence: While riding south on 12th St.—green light favoring me—a naval ambulance going east on Moyamensing Avenue struck my car at rear and threw me on other side of street (southeast corner).

DESCRIPTION OF INJURY

1. Concussion of brain
2. Sprain of back
3. Nervous shock
4. Contusion of right knee

TREATMENT

Date of treatment:
Home: June 22, 23, 24, 25, 26, 27, 29
Office: July 1, 2, 5, 8, 11, 12, 14, 17, 20, 23, 26, 27, 28, 29, August 2, 4, 8, 9
X-ray and findings: X-rayed at Methodist Episcopal Hospital

DISPOSITION OF CASE

Taken home or to hospital: Hospital
Name of hospital: Methodist Episcopal Hospital
Date of discharge: June 21, 1949

PROGNOSIS AND PERMANENCY OF INJURY

Prognosis: Guarded, as he still complains of memory loss and dizzy spells.
Estimated disability from date of accident: Indefinite.
Recorded by: Anthony Nicolo
Street and No.: 1738 South Ninth Street
City: Philadelphia. State: Pennsylvania
Date: Sept. 13, 1949

EXHIBIT B

PHILADELPHIA 48, PA., *September 14, 1949.*

For professional services rendered to Joseph Gangemi of 1601 Packer Avenue $89
Thank you.

ANTHONY NICOLO, M. D.

EXHIBIT C

METHODIST EPISCOPAL HOSPITAL

A. W. No. 1633B $25

PHILADELPHIA, PA., *June 21, 1949.*

Received of Joseph Gangemi, $25. $10—spheric X-ray, skull; $15 for treatment.

M. B. CONNOR.

DEPARTMENT OF THE NAVY,
OFFICE OF THE JUDGE ADVOCATE GENERAL,
Washington, D. C., September 11, 1952.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: Reference is made to your letter of July 7, 1952. to the Secretary of the Navy requesting comment on H. R. 8479, a bill for the relief of Joseph Gangemi and Anthony Gangemi.

The purpose of the measure is to authorize the Secretary of the Treasury to pay the sum of $1,656 to Joseph Gangemi and Anthony Gangemi, of Philadelphia, Pa., in full settlement of all claims of Joseph and Anthony Gangemi for personal injuries and property damage arising out of a collision between a Navy ambulance and an automobile operated by Joseph Gangemi and owned by Anthony Gangemi.

The collision which gave rise to the claim occurred on June 21, 1949, in Philadelphia. At about 1:30 p. m. on that date a Navy ambulance, driven by Joseph Altman, a fully qualified and licensed chauffeur employed by the Navy, was proceeding from the shipyard to Mount Sinai Hospital with a Navy employee, who had suffered a heart attack at work, as passenger. The ambulance's siren was being operated; whether or not the flashing red light was being operated is not clear. As the ambulance, which was proceeding along Moyamensing Avenue, was approaching the 6-way intersection of Moyamensing, Porter, and 12th Streets, 2 pedestrians leaped into the street and tried to flag down other traffic proceeding into the intersection. Seeing this, the driver of the ambulance slowed from about 40 miles per hour to 25 miles per hour and proceeded into the intersection. Joseph Gangemi, who was driving a 1948 Pontiac sedan owned by his son, Anthony Gangemi, either did not see or ignored the pedestrian who was signaling him to stop, and proceeded into the intersection. The pedestrian, according to his statement, had to leap for safety to avoid being run down by the Pontiac. When the driver of the ambulance saw that the Pontiac was entering the intersection, he immediately applied his brakes. It was then too late, however, to avoid a collision, and the front of the ambulance struck the right rear of the Gangemi vehicle. As a result of the collision Joseph Gangemi suffered a concussion of the brain, sprain of his back, nervous shock, and contusion of the right knee. The Pontiac sedan was damaged to the amount of $156.

At the time of the collision Joseph Gangemi, according to his statement, was on an errand for his son. His version of the accident is that "* * * while driving through the intersection at 12th and Porter Streets with a green light in my favor

at a speed of 10 miles per hour I saw a naval ambulance going east on Moyamensing Avenue. The first time I saw the ambulance I was entering the intersection and the ambulance was about 150 feet from the corner, and as I crossed and watched the ambulance it was coming very fast and struck my car at the right rear door and fender."

Section 574 (a) of title 75, Purdon's Pennsylvania Statutes, provides, in effect, that upon the approach of an ambulance giving audible signal, every other vehicle shall immediately drive to the right-hand curb, clear of any intersection, stop, and remain there until the ambulance has passed. It would appear, therefore, that through his failure to obey this traffic law, as evidenced by his own admission, Joseph Gangemi was guilty of contributory negligence as a matter of law. Since he was the agent of his son Anthony and not a bailee, his contributory negligence is imputable to his son and therefore would prevent a recovery by Anthony Gangemi for damage to his automobile. The Department of the Navy, therefore, denies liability for both the personal injuries to Joseph Gangemi and for the property injury to Anthony Gangemi's 1948 Pontiac sedan.

Shortly after the accident Mr. Joseph Gangemi filed a claim with the Department of the Navy for $1,656—$156 for damage to the vehicle and $1,500 for personal injuries. Since this amount is above the statutory limit of the Navy's settlement authorization, the claimant was advised that the Navy lacked statutory authority to settle the claim. Negotiations were entered into between the attorneys for the Gangemis' and the Navy's legal representative in the Philadelphia area with regard to reduction of the claim to less than the statutory amount of $1,000, but these negotiations did not result in the filing of a valid reduction agreement until October 2, 1951, which was more than 2 years after the accident. The statute of limitations having run, the Navy had no authority to settle the claim administratively, and it was denied on that ground without any consideration being given to the question of the negligence of the Navy driver and the contributory negligence of Joseph Gangemi.

In view of the foregoing, the Department of the Navy does not consider that the Government is legally liable to Joseph and Anthony Gangemi. Accordingly, in the absence of any known equitable consideration, the Department of the Navy recommends against the enactment of H. R. 8479.

The Department of the Navy has been advised by the Bureau of the Budget that there is no objection to the submission of this proposed report to the Congress.

Sincerely yours,

S. B. D. WOOD,
Assistant Judge Advocate General.

FARNESE & PERSICHETTI,
Philadelphia, Pa., June 20, 1952.

WILLIAM A. BARRETT,
Congressman, Congress of the United States,
House of Representatives, Washington, D. C.

DEAR MR. BARRETT: Our mutual friend, Samuel B. Regalbuto, has indicated that I should write to you with our problem which is hereinafter set forth. No doubt, he will talk to you if he has not already done so.

We represent a Joseph Gangemi and an Anthony Gangemi, the former who suffered personal injuries and the latter property damage as a result of a collision involving a Navy ambulance and the automobile of Anthony Gangemi operated by Joseph Gangemi. The original claim which we filed in this matter was for $1,656; $1,500 personal injuries and $156 for property damage.

Since, under the Small Claims Act, the Navy could not settle the claim for $1,656, there have been numerous negotiations to try to reduce that figure to come within the act. Ultimately, after the Navy, through its officers, has negotiated with us, and after we agreed to reduce the figure to within the $1,000 limitation, the Navy, on June 11, 1952, wrote us to the effect that our claims would now be barred by the statute of limitations. They said that the fact that negotiations were going on does not alter the situation.

In view of the foregoing, we believe that the only way we can now recover would be by private legislation.

We think we should renew our claim for $1,656 by way of private legislation and respectfully request your cooperation in the introduction of a bill for that purpose.

If there is any additional information that you want, please let us know.

Yours very truly,

FARNESE & PERSICHETTI,
By ALBERT J. PERSICHETTI.

90000°—57 S. Rept., 84-2, vol. 6——90

Calendar No. 1861

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1838

MRS. HELEN BARSA

APRIL 24, 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 4872]

The Committee on the Judiciary, to which was referred the bill (H. R. 4872) for the relief of Mrs. Helen Barsa, having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to pay Mrs. Helen Barsa, of Detroit, Mich., the sum of $1,000 in full settlement of all claims against the United States as a refund of departure bonds for Marie Sofie Farah and Jorge Farah which was declared forfeited on March 15, 1954.

STATEMENT

Marie Sofie Farah and Jorge Farah, who were citizens and natives of Syria, were admitted into the United States at Miami, Fla., as visitors for pleasure on May 13, 1953. These two persons were the mother and brother of Mrs. Helen Barsa. Mrs. Barsa was required to post two $500 departure bonds in connection with the visit of her relatives to this country. Mrs. Barsa and her mother and brother understood that the latter 2 persons had been admitted as visitors for a stay of 6 months when in fact their departure date was October 13, 1953, which was 5 months after entry. In accordance with this understanding, Maria Sofie Farah and Jorge Farah left the United States on November 4, 1953. The result was that the two bonds were declared forfeited because the October 13, 1953, departure date had not been complied with.

The Department of Justice in reporting on the instant bill states, in part, that the file reveals a breach of the bonds and a proper enforcement of its terms in these cases can be effective aids to the administration of the immigration laws only if there be compliance with their terms. That Department concludes that it is aware of no reason why the terms of these bonds should not be enforced and, therefore, is unable to recommend enactment of this bill.

The committee is constrained to disagree with the views of the Justice Department. Sworn affidavits before the committee reveal that these people of advanced years, strangers to our language and our customs, and depending entirely upon friends and relatives of similar limitations, speaking the only language known and understood by the Farahs, might very easily misunderstand the terms of the bonds. It is apparent from the affidavits on file that they believed that the visas were for 6 months, and no attempt was made to seek an extension of their temporary admissions and that they acted at all times in the belief that they had been admitted for a 6-month visit for which they had applied, rather than the 5-month stay actually granted them.

It is evident that all of the parties concerned proceeded in good faith to comply with the terms of admission of the two visitors. The misunderstanding arose from the fact that the 2 visitors had originally applied for a 6 months' visit. It further appears that neither of the visitors could read the papers or notices which related to the matter. The committee also is aware that Mrs. Barsa had been recently widowed, and that in addition Mr. Jorge Farah was hospitalized for a broken rib during a portion of the time he was in the United States. These disturbing situations could well have complicated the matter. In any event the committee is of the firm opinion that Mrs. Barsa's case is a meritorious one, and recommends the favorable consideration of the bill.

The committee has been informed by the author of this bill that there is an attorney involved; therefore, the proviso limiting attorney's fees to 10 percent has been retained.

Attached hereto and made a part hereof is the report of the Department of Justice submitted in connection with the instant bill and certain evidentiary data relating to the claim.

AFFIDAVITS

STATE OF MICHIGAN,
County of Wayne, ss:

Helen Barsa, being duly sworn on her oath, deposes and states that she is the daughter of Maria Sofie Farah and the sister of Jorge Farah who visited the United States from Colombia, South America.

This deponent further states that she went in the company of her uncle, George Safie, to the National Surety Co., of this city, and with him posted two $500 bonds for the return of her brother and mother at the expiration of the 6-month visa period. They each stated at that time to the agent there that this bond was a 6-month bond and it was their understanding as such and at no time was she told otherwise. She sets up that she is a widow, has less than $1,000 in the bank, has an income of slightly over $6,000 a year and that the forfeiture of this $1,000 will work a serious hardship upon her.

This deponent further states that upon the arrival of her mother and brother they stayed with the deponent. That for a portion of the time Jorge was sick and it would have been a simple thing to have the visas extended if they had known they were for 5 months; however, 13 days before the expiration of the time al-

lotted, according to their understanding, they departed leisurely, went to Florida and presented themselves for departure well within the allotted time extended to them as each understood it. During their entire stay in Detroit they were continually at the home of this deponent and the subject matter of returning was constantly referred to and conscientiously adhered to; that since the time was 5 and not 6 months that never reached the knowledge of any interested person. The original application was made for a 6-month period and when obtained there was no communicable knowledge to any person that it was for a lesser time.

Further this deponent sayeth not.

HELEN BARSA.

Subscribed and sworn to before me this 6th day of August A. D. 1954.

NICHOLAS SALAWICH,
Notary Public, Wayne County, Mich.

My commission expires January 4, 1957.

STATE OF MICHIGAN,
County of Wayne, SS.

Helen Barsa, being first duly sworn on her oath, deposes and states that she is a resident at 15011 Oakfield Avenue, Detroit, Wayne County, Mich., and that she is daughter of Maria Sofie Farah and a sister of Jorge Farah.

She further states that she unfortunately became a widow and asked that her mother and brother come and visit with her during her bereavement and an application was therefore made, permission was granted and a bond was sequired to be posted in the event of their failure to return. That during the time they were in Michigan, her brother Jorge Farah suffered an injury which is evidenced by the report of St. Joseph Hospital attached to the affidavit of George Safie, her cousin.

That neither her mother or brother are able to write in any language and it was this deponent's understanding that she was posting bond for the return of her relatives not less than 6 months after their arrival. That she did, therefore, in accordance with her understanding post such a bond and in accordance with the understanding of all that they had 2 weeks time remaining of the 6 months when they actually did leave the shores of the United States and returned to their home in South America. That is was only afterward that she ascertained that the date given by the Government was for a period of less than 6 months.

This deponent further states that there not only has never been any knowledge on the part of anyone that the period of stay had expired prior to their departure but there never was any intent to violate the terms of the privilege extended to them by the Government and since there has been a violation committed, it was through lack of knowledge or inadvertence and was without any intent to violate any terms imposed under the visitation privilege extended.

That the forfeiture of the bond will work a hardship upon this deponent and it is an unreasonable penalty for an error not of her making and a severe hardship will ensure.

Further, this deponent sayeth not.

[SEAL] HELEN BARSA.

Subscribed and sworn to before me this 3d day of May A. D. 1954.

NICHOLAS SALOWICH,
Notary Public, Wayne County, Mich.

My commission expires January 4, 1957.

STATE OF MICHIGAN,
County of Wayne, ss:

George Safie being first duly sworn on his oath deposes and states that he is the nephew of Maria Sofie Farah and cousin of Jorge Farah, recently permitted to enter the United States from Colombia, South America.

This deponent further states that during the visit of his relatives, they spent a good portion of the time they were here, in the home of this deponent, that he examined the papers of each and from his knowledge of those papers and conversations, he was certain that the visit was for a period of 6 months, and that it was so understood by all concerned.

That prior to the expiration of the privileged time Jorge Farah had an accident that fractured his rib, which incapacitated him from movement; he was taken to the hospital, treated by a physician, whose statement is attached hereto with X-ray reports, and notwithstanding his then condition he, in company with his mother, Maria Sophie Farah, left for the port of embarkation at Miami, Fla., nearly 2 weeks before the time the visiting privilege expired.

This deponent further states that he is also the cousin of Helen Barsa, the daughter of Maria Sofia Farah, and the sister of Jorge Farah, and she was requested to place a bond to guarantee the departure of each on or before the expiration of the allotted time, which this deponent told me was 6 months from the date of entry.

That the bond was given by the National Surety Corp., and as security she posted two $500 cash deposits to reimburse the surety corporation in the event of default.

That in the knowledge of this deponent and all concerned, there was no default, that the aliens did return within the stipulated time as known to each, but which unfortunately does not appear to conform to the facts, all of which was unknown to any of the parties.

That the aliens do not read or write any language, that any documents given to them was unintelligible to either, and no documents that either had indicated that their stay was for any period of time less than 6 months, within which time hey returned to their home in South America.

That Helen Barsa is a recent widow, that she was in need of solace, sent for her mother and brother, who has an established business, a rice mill, from which he derives a splendid income and would have no reason to overstay his leave, and any default of the conditions of his stay were not only unknown to him or his mother but if made were through lack of knowledge, and each thought at the time of departure that they would probably stay the remainder of their time in Miami until the date of departure, all of which indicates that they believed they were well within the allotted time.

This deponent further states that the forfeiture of the bond money will work an irreparable hardship on his counsin Helen Barsa, that she cannot afford to lose the money posted, that if an innocent mistake were made and she is penalized therefor, that a tremendous hardship will result unnecessarily.

This deponent further states that during a portion of the time of their stay, the above relatives lived in his home in Mount Clemens, a city within 30 miles of Detroit; during which time it became manifest and quite evident that the remaining period of the visitation was one of sufferance rather than the expected enjoyment by all.

This deponent further states that it is his personal knowledge that because of the injury and other conditions the end of the stay was a welcome relief and they left knowing that they still had 2 weeks within which time they were to make the few days journey to the port of embarkation.

Further, this deponent sayeth not.

GEORGE SAFIE.

Subscribed and sworn to before me this 3d day of May, A. D., 1954.

NICHOLAS SALOWICH,
Notary Public, Wayne County, Mich.

My commission expires January 4, 1957.

STATE OF MICHIGAN,
County of Wayne, ss:

Maria Sofie Farah, being first duly sworn on her oath, deposes and states that she is the mother of Helen Barsa. That they obtained the right to visit the United States and entered the port of Miami after having asked for a 6-month visitors' visa to go to Detroit, Mich. That upon their arrival in Miami they telephoned Helen Barsa and requested that she post a bond in their behalf permitting them to remain for 6 months. That she did accordingly and posted two $500 bonds for a 6-month visa.

This deponent further states that at no time was she ever told that the temporary visa was for less than 6 months and that 2 weeks prior to the expiration of the 6-month period they leisurely took their belongings and left for Miami where they departed 13 days before the time allotted to them according to their understanding. This deponent further states that she never knew that the terms of the visa was

limited to 5 months and that she has never been informed of any variation from the 6-month request made for their entry.

MARIA SOFIE FARAH.

Subscribed and sworn to before me this 23d day of August, A. D. 1954.

[SEAL] CALINE PUNLOLI,
Notary Public, Segundo.

My commission expires December 31, 1954.

STATE OF MICHIGAN,
County of Wayne, ss.

Jorge Farah, being first duly sworn on his oath, deposes and states that he is the brother of Helen Barsa. That they obtained the right to visit the United States and entered the port of Miami after having asked for a 6-month visitors' visa to go to Detroit, Mich. That upon their arrival in Miami they telephoned Helen Barsa and requested that she post a bond in their behalf permitting them to remain for 6 months. That she did accordingly and posted two $500 bonds for a 6-month visa.

This deponent further states that at no time was he ever told that the temporary visa was for less than 6 months and that 2 weeks prior to the expiration of the 6-month period they leisurely took their belongings and left for Miami where they departed 13 days before the time allotted to them according to their understanding.

This deponent further states that he never knew that the terms of the visa was limited to 5 months and that he has never been informed of any variation from the 6-month request made for their entry.

JORGE FARAH.

Subscribed and sworn to before me this 23d day of August, A. D. 1954.

[SEAL] CALINE PAULO C.,
Notary Public, Segundo.

My commission expires December 31, 1954.

MOTION TO RECONSIDER THE DECISION DECLARING TWO BONDS FORFEITED

Comes now the National Surety Corp. by its attorney, Paul E. Carroll, and sets up as follows:

That on or about May 13, 1953, Maria Sofie Farah, an alien, age 76 and her son Jorge Farah, age 56, arrived at the port of Miami, Fla., as temporary visitors and in compliance with title 8, Code of Federal Regulations, section 214.3, they posted bonds in the sum of $500 each with the National Surety Corp. of New York, N. Y., as surety.

During the latter part of the time the aliens were in the Detroit area, Jorge Farah suffered injuries in an automobile accident; these injuries hospitalized him for a short time but the extent of the injuries interfered with normal activity for some weeks.

In October 1953, these aliens believing that their permits granted them a stay of 6 months from the date of entry, May 13, 1953, made a leisurely trip to Miami expecting to leave there November 13, 1953. The actual date of departure set out in the bond was October 13, 1953.

These aliens learned of their error after going to the Immigration Service offices in Miami, at which time they learned for the first to their actual knowledge that they were due to depart October 13, 1953, a date already past by several days. Without further delay they departed from the United States just 13 days after October 13, 1953.

On March 15, 1954, Joseph Menton, acting district director wrote to the National Surety Corp., in Miami, Fla., and notified Mr. George H. Sweet, attorney in fact, regarding the bonds of Maria Sofie Farah and Jorge Farah, "It has been concluded that the bonds executed by you (as obligor) has been breached."

On March 29, 1954, the National Surety Corp., notified Mrs. Helen Barsa, Detroit, Mich., indemnitor for the surety ,that they had notice of declaration of forfeiture of both bonds in the sum of $500 each.

Mrs. Helen Barsa, as the guarantor of her mother and brother, respectfully urges reconsideration of the decision together with the National Surety Corp.

These petitioners submit that section 8 and 8.11 of title 8, Code of Federal Regulations, set out the rule for such motions that they shall state the reasons

for reconsideration and shall be supported by such precedent decisions as are pertinent; it is, therefore, respectfully submitted that a careful lengthy study of Administrative Decisions Under Immigration and Nationality Laws of the United States, bound volumes 1, 2, and 3, from August 1940 to March 1950, together with a search through the Interim Decisions of the Board of Immigration Appeals since March 1950, fails to disclose any decisions pertinent to the particular question raised in this motion to reconsider, where bonds of nonimmigrants admitted as visotors were forfeited by administrative officers because of breach of condition of departure from the United States within time limit set in admission permit.

It is further submitted that the only case in these bound volumes of Administrative Decisions or the Interim Decisions to be found is in volume 3 on page 862. The case discussed here is *Picinich* v. *Miller* (1949). In that case the bond of an alien was declared breached for his failure to comply with the conditions of his entry and his subsequent failure to comply with orders of the Immigration and Naturalization Service.

It is respectfully submitted that no case pertinent to the Farah bond matter can be found in Administrative Decisions or Interim Decisions to support this motion. There are, however, numerous cases touching on this point that are reported in the decisions of the Federal courts, the opinions and decisions of the courts are pertinent to this matter and some are respectfully cited herein to support the petition to reconsider.

In *Kavounas* v. *United States* (89 Federal Supp. 689, on p. 691 (Apr. 30, 1950)) the court said: "As a general proposition courts are reluctant to declare forfeiture of bonds on narrow and technical grounds, but in this case the conditions of the bond have been breached as the facts plainly disclose."

The court's statement in the Kavounas case is cited herein to point out a general proposition that "Courts are relucant to declare forfeiture of bonds on narrow and technical grounds."

Petitioners herein respectfully point out that the grounds for forfeiture in the instant case are technical grounds only, there being no record of abuse or misuse of the privilege of admission to the United States by these petitioners.

In *Kubara et al.* v. *United States* (89 Federal (29) 965 on p. 966) the court said: "The jury, under binding direction of the court found a verdict for the Government, the court stating in its opinion that the bond had already been declared forfeited by the Commissioner General of Immigration; thereupon the bondsmen took this appeal. We here note that on the argument we requested counsel to cite to us any statute or enabling power authorizing the forfeiture of such bond by a departmental officer and thus preclude an obligor from trying before a jury a breach of bond. We find no such power in a departmental officer," (3d Circuit Court of Appeals, May 6, 1937).

In *United States* v. *Western Surety Co.* (118 Federal (29) 703, on Mar. 3, 1941), the 9th Circuit Court of Appeals said, on page 703: "No statute or regulation conferring such adjudicating power on the department officials has been cited. We agree with the decision in *Kubara* v. *United States* (3d Circuit Court of Appeals, 89 Federal (2d) 965), that it does not exist.

The conclusion to be drawn from these court decisions is that the procedure followed in declaring breach of bonds and forfeiture is one within the limited and guarded discretion of the administrative officers in the Immigration and Naturalization Service.

The Farahs entered the United States as visitors, they came because of a death in their immediate family, the death of the husband of their daughter and sister. They were not able to speak or to read or to understand the English language. In fact, it is asserted that they neither wrote nor read any language, that they are limited in education. All conversations with them were with people of the same class, with few exceptions.

All of their acts were in compliance with the permit to enter the United States as nearly as they could understand and abide by the rules. There has been no complaint or criticism of their conduct by anyone. They caused no trouble to the Service as would cause concern or extra effort which upset the orderly administration of the Immigration and Naturalization Service. They did not disregard or willfully or knowingly ignore any order or rule of the Department. We here make reference to the phraseology of the bonds posted by the Farahs and point to the language of the concluding clause of the bond beginning at line 22, "Now, therefore, the conditions of this bond, etc. etc." and ending at line 30.

People of advanced years, strangers to our language and our customs and depending entirely upon friends and relatives of similar limitations, speaking the only language known and understood by the Farahs, might very easily be misled by and not clearly understand such phraseology.

The records in the Miami district will show that the Farahs were in Miami between October 13, 1953, the date of departure indicated in the bond.

The time of their actual departure was approximately 13 days past the date set in the permit and 3 days prior to the date they believed their permit to expire.

The question here is whether there has been an actual breach of the conditions of the bonds.

It is here respectfully urged that there has been no willful, hurtful, or deliberate disregard of the conditions of the bonds, no violation to warrant declaration of breach and forfeiture.

The meeting of minds essential to a contract was not present so far as these petitioners are concerned.

Court decisions are almost uniform in the opinions that the real measure of damage in such cases is some actual disturbance which upset the administrative procedure of the Immigration Service.

These petitioners therefore pray that the motion to reconsider be granted and that the administrative officer with jurisdiction over the Miami area reverse the decisions of the district director and remit forfeiture of the bonds of Maria Sofie Farah and Jorge Farah.

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, July 5, 1955.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice concerning the bill (H. R. 4872) for the relief of Mrs. Helen Barsa.

The bill would provide for the payment of the sum of $1,000 to Mrs. Helen Barsa, of Detroit, Mich., as compensation for the loss sustained by her in connection with the forfeiture of certain departure bonds posted for Maria Sofie Farah and Jorge Farah.

The files of this Department disclose that Maria Sofie Farah and Jorge Farah, natives and citizens of Syria, arrived in the United States at Miami, Fla., on May 13, 1953, and were admitted as visitors for pleasure for approximately 5 months upon deposit of a $500 departure bond for each of them. The conditions of the bonds were that the aliens depart from the United States on or before October 13, 1953. The aliens did not depart from the United States until November 4, 1953, no extensions of their temporary admission having been applied for or granted. The surety was notified that the conditions of the bonds had been violated and that the bonds had been breached. Counsel for the surety company filed a motion for reconsideration of the decision of the district director of the Immigration and Naturalization Service, and on July 14, 1954, the motion was denied. On July 27, 1954, the surety paid the obligation to the Government in two drafts, each in the sum of $500.

Information in the files reveals that counsel contended in behalf of the aliens that they had applied for a 6 months' visa but were only given 5 months, that they were not aware that only 5 months had been granted, and that their delay in departure was in ignorance of the fact that earlier departure was required. The files, however, contain copies of separate notices dated May 14, 1953, addressed to both aliens in care of Mrs. Helen Barsa, the claimant in this measure, the third paragraph of which stated the departure date to be October 13, 1953, unless an extension of that stay was granted by the Immigration Service.

The file reveals a breach of the bonds and a proper enforcement of its terms. Bonds in these cases can be effective aids to the administration of the immigration laws only if there is compliance with their terms. The Department of Justice is aware of no reason why the terms of these bonds should not be enforced and is unable to recommend enactment of the bill.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely,

WILLIAM P. ROGERS,
Deputy Attorney General

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Calendar No. 1862

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1839

FRED MAZAN

APRIL 24, 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 5626]

The Committee on the Judiciary, to which was referred the bill (H. R. 5626) for the relief of Fred Mazan, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to relieve Fred Mazan of all liability to refund to the United States the sum of $241.35, which sum represents compensation received by him as a temporary employee of the New Haven, Conn., post office from July 7, 1949, to October 8, 1949, while he was also employed by the Springfield, Mass., ordnance district, as an inspector, and was receiving dual compensation from the United States at a combined annual rate in excess of $2,000.

STATEMENT

The records of the New Haven post office indicate that for the period December 6, 1948, to December 31, 1948, Mr. Mazan was employed 111 hours, of which 73 hours' service was performed after 6 p. m. The report of the Post Office Department further indicates that for the period July 7, 1949, to October 7, 1949, the claimant was employed 172 hours, of which 151 hours' service was performed after 6 p. m. For the respective periods the claimant was paid $151.61 and $241.35, which amounts included night differential.

It is understood that demand has been made upon the claimant through the Department of the Army, where he is presently employed,

for a refund of the money paid him as a substitute postal employee during the periods he was so employed. It is to be noted that this bill would relieve the claimant of liability to make refund only with respect to the latter of the two periods of postal employment. The Post Office Department states that it is not known whether the former period of postal employment also involved dual employment.

In the report of the Post Office Department on the instant bill, it is stated that in view of the fact that the Government received the benefit of Mr. Mazan's services, that Department would interpose no objection to relieving him of liability to refund amounts representing compensation so received by him. The committee, after consideration, concurs in the views expressed by the Post Office Department and, therefore, recommends that the bill, H. R. 5626, be considered favorably.

Attached hereto and made a part hereof is the report of the Post Office Department, hereinbefore referred to, as well as an affidavit executed by Mr. Mazan in support of his claim.

OFFICE OF THE POSTMASTER GENERAL,
Washington, D. C., July 11, 1955.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to your request for a report on H. R. 5626, a bill for the relief of Fred Mazan.

This bill would relieve Mr. Mazan of liability to refund to the United States the sum of $241.35, representing compensation received by him as a substitute employee in the New Haven, Conn., post office from July 7, 1949, to October 7, 1949, while he was also an employee of the Springfield, Mass., Ordnance District, and was receiving dual compensation from the United States at a combined rate in excess of $2,000 per annum.

The records of the New Haven post office indicate that for the period December 6, 1948, to December 31, 1948, Mr. Mazan was employed 111 hours, of which 73 hours service was performed after 6 p. m. For the period July 7, 1949, to October 7, 1949, Mr. Mazan was employed 172 hours, of which 151 hours service was performed after 6 p. m. For the respective periods Mr. Mazan was paid $151.61 and $241.35, which amounts included night differential.

It is understood that demand has been made upon Mr. Mazan th ough the Department of the Army, where he is presently employed, for a refund of the money paid him as a substitute postal employee during the periods he was so employed. This bill would relieve Mr. Mazan of liability to make refund only with respect to the latter of the two periods of postal employment. It is not known whether the former period of postal employment also involved dual employment.

In view of the fact that the Government received the benefit of Mr. Mazan's services, this Department would interpose no objection to relieving him of liability to refund amounts representing compensation received for either, or both, periods of postal employment, if the committee's investigation develops the fact that Mr. Mazan also was in a dual employment status during the period December 6 to December 31, 1948.

The Bureau of the Budget has advised that there would be no objection to the presentation of this report to the committee.

Sincerely yours,

C. R. HOOK, Jr.,
Acting Postmaster General.

JULY 17, 1955.

RE H. R. 5626, FOR THE RELIEF OF FRED MAZAN

To Whom It May Concern:

I, the undersigned, Fred Mazan, swear and attest under oath that I did not know the provisions of the law which prevented me from engaging in dual employment, and earning more than $3,000.

I further swear that when I received my inquiry from the Post Office Department for part-time employment, I informed the local United States civil service representative who did the hiring, verbally and in writing on my application, that I was already employed by a Federal agency. Nevertheless, I was hired, indicating that they were not cognizant of the law either.

FRED MAZAN, *New Haven, Conn.*

STATE OF CONNECTICUT,
County of New Haven, ss:

Personally appeared before me Fred Mazan of 206 West Rock Avenue, New Haven, on this 16th day of July 1955, who doth swear the above to be true to the best of his knowledge and belief.

[SEAL] JOHN P. FINNERTY,
Notary Public.

My commission expires April 1, 1957.

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Calendar No. 1863

84TH CONGRESS, 2d Session } SENATE { REPORT No. 1840

WILLIE C. PICKETT, GEORGE WILLIAMS, AND HERMAN L. LOONEY

APRIL 24, 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 5634]

The Committee on the Judiciary, to which was referred the bill (H. R. 5634) for the relief of Willie C. Pickett, George Williams, and Herman L. Looney, having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to relieve Willie C. Pickett, George Williams, and Herman L. Looney, employees in the Helium Activity, Bureau of Mines, Department of the Interior, at Amarillo, Tex., of liability to refund to the United States the sums of $466.57, $923.47, and $66.90, respectively, which they received as excess compensation as a result of their promotions, approved on November 8, 1951, and which were the subject of an opinion of the Comptroller General, dated May 5, 1954, which is printed in full below.

STATEMENT

The proposed legislation was submitted to the Congress by the Department of the Interior.

It appears that the three claimants, employees in the Helium Activity, Bureau of Mines, Department of the Interior, at Amarillo, Tex., received the amounts set forth in the proposed legislation pursuant to promotions given to them, approved November 8, 1951, and which the Civil Service Commission subsequently held were in

violation of the so-called second Whitten rider. This provision, contained in section 1310 (c) of the act of November 1, 1951 (65 Stat. 758), required service in grade for 1 year before an employee could be given a 1-grade promotion, or in some instances, a 2-grade promotion. The Comptroller General, requested by the Department of the Interior to relieve the affected certifying officer from calling for reimbursement from the employees, held in a decision of May 5, 1954, that the employees should be instructed to make refunds. Relief can be had only by act of Congress.

The Department urges that such relief be granted, pointing out that information in regard to the so-called second Whitten rider, enacted on November 1, 1951, was not received by the appointing officer of the Bureau of Mines at Amarillo, Tex., until November 6, 1951; that the office assumed that the approval of the Civil Service Commission constituted approval for the promotions; that the promotions were effected by the Bureau and received by the employees in good faith; that the employees have fulfilled the duties of their positions in an excellent manner and are in no way responsible for the administrative errors made; and that to call upon them for financial reimbursement at this late date would impose a personal and undue hardship upon them.

On the record before it the committee believes that the proposed legislation is meritorious and recommends it favorably.

Attached and made a part of this report is a letter, dated April 8, 1955, from the Department of the Interior, enclosing a letter, dated January 4, 1954, from the Department of the Interior to the Comptroller General of the United States, and a copy of the decision of the Comptroller General, dated May 5, 1954.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D. C., April 8, 1955.

Hon. RICHARD M. NIXON,
President of the Senate,
Washington, D. C.

MY DEAR MR. PRESIDENT: Enclosed herewith is a draft of a proposed bill entitled, "For the relief of Willie C. Pickett, George Williams, and Herman L. Looney."

These three men are employees of this Department, employed in the Helium Activity, Bureau of Mines, at Amarillo, Tex. The purpose of the proposed bill is to relieve these employees of the necessity of refunding to the Government the amounts of $466.57, $923.47, and $66.90, respectively. These sums have been earned by these employees pursuant to promotions given to them on November 8, 1951 (effective November 11, 1951), which the Civil Service Commission subsequently held were in violation of the second Whitten rider set forth in subparagraph (c) of section 1310, act of November 1, 1951 (65 Stat. 758). The latter provision required service in grade for 1 year before the employee could be given a 1-grade promotion, or in some instances, a 2-grade promotion. Since the promotions of these three employees were held to contravene the Whitten rider, the employees would be required to refund the excess salaries received

during the period that the promotions were in effect. This was so held by the Comptroller General in decision B–119468, of May 5, 1954.

There have been three versions of the Whitten rider. The first Whitten rider was contained in section 1302 of the act of September 27, 1950 (64 Stat. 1066), and was effective from September 1, 1950, until October 31, 1951. It contained no specific provision requiring any time in grade before promotion to a higher grade. Accordingly, the three employees mentioned above could have been promoted before November 1, 1951, upon prior approval of the Civil Service Commission. Their promotions, in fact, had been proposed prior to November 1, 1951. Two of these promotions were approved by the Civil Service Commission on October 29, 1951, and the other was approved by the Civil Service Commission on November 1, 1951. The normal administrative processing of the papers resulted in the approval of the promotions by the authorized officer of the Bureau of Mines on November 8, 1951.

Although the second Whitten rider was enacted on November 1, 1951, information concerning it was not received by the appointing officer of the Bureau of Mines at Amarillo, Tex., until November 6, 1951. That office assumed that the approval of the Civil Service Commission constituted approval for the promotions. These promotions were effected by the Bureau and received by the employees in good faith. They have fulfilled the duties of their positions in an excellent manner, and are in no way responsible for the administrative errors made. To call upon them for financial reimbursement at this late date would impose a personal and undue hardship upon them.

Enclosed are copies of this Department's letter of January 4, 1954, to the Comptroller General, and the Comptroller General's Decision (B–119468) of May 5, 1954.

The Bureau of the Budget has advised that there is no objection to the presentation of this proposed legislation to the Congress.

Sincerely yours,

FELIX E. WORMSER,
Assistant Secretary of the Interior.

[Enclosure]

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D. C., January 4, 1954.

Hon. LINDSAY C. WARREN,
Comptroller General of the United States,
Washington, D. C.

MY DEAR MR. WARREN: We respectfully request that your office relieve the affected certifying officer from the necessity of calling for reimbursement from three employees of the Helium Division, region VI, Bureau of Mines, Amarillo, Tex. The matter involves overpayments because of corrective action required by the Civil Service Commission on certain promotion actions taken on November 8, 1951, effective November 11, 1951. The employees involved and the gross reimbursement now required are as follows: George Williams, $923.47; Herman L. Looney, $66.90; Willie C. Pickett, $466.57.

The need for corrective action under section 1310 of the Supplemental Appropriation Act, 1952 (known as the Whitten rider), was brought to the attention of the Bureau of Mines officials during the civil-service inspection in March 1953. Corrective action, as recommended by the inspection report, has been taken as evidenced by the enclosed copies of notification of personnel actions.

Region VI of the Bureau of Mines is responsible for producing the entire world's supply of helium. Four helium plants are operated—2 located near Amarillo, Tex.; 1 at Otis, Kans.; and 1 at Shiprock, N. Mex. The processes for extracting helium from natural gas have been developed over a period of years and in developing these processes the Bureau has trained all of the people in the United States who are familiar with the procedures of the Bureau's helium-extraction processes. Nowhere else is it possible for individuals to acquire the necessary qualifications to supervise such production activities.

Prior to 1951 the immediate supervision of individual multi-million dollar helium-production plants was in the hands of professional engineering personnel. However, because of the demand for helium and the scarcity of technical personnel, it was necessary to place the supervision of the helium plants in the hands of employees without professional background but having had long years of experience in helium-plant operations. Technical personnel were then centralized at division headquarters. Under this arrangement the technical experts were available upon call from any of the plants to advise on problems encountered.

The above change in management was initiated in August 1951. The positions of helium plant superintendent and assistant superintendent were classified, established, and filled. In selecting persons for the new positions, only long-time and proven employees could be considered because of the unique qualifications required. The best qualified workers, from among those holding the highest and most responsible jobs, were chosen to fill the new positions. Placing employees in the new positions involved promotions of as much as three grades. Civil-Service approval, therefore, was secured on October 29 and November 1, 1951 for the promotions under the terms of the Whitten rider in effect from September 1, 1950, to October 31, 1951.

There have been 3 separate versions of the Whitten rider during the past 3 years. The three personnel actions involved were being processed prior to November 1, 1951, when the second Whitten rider went into effect. The actions were all signed by the appointing officer on November 8, 1951, without realizing the effect of the second Whitten rider.

The three separate versions of the rider have varied, but one of the common objectives has been to prevent excessively rapid promotions. These 3 employees have service of 10, 12, and 24 years in helium-plant operations, and we do not feel that their promotions should be considered excessively rapid. For example: Mr. Williams was employed at the helium plant in 1943: he was promoted August 5, 1951 to GS–8 from an ungraded position he had held since June 27, 1948. Mr. Looney's promotion to GS–9 was from a CPC–10 grade he had held since August 30, 1943. Mr. Pickett's promotion was from the GS–8 position he had held since 1946.

The second Whitten rider was approved on November 1, 1951, and was effective immediately. It was obviously impossible for the

Commission to issue immediate instructions as to the application of the Whitten rider provisions. The regional office of the Bureau of Mines at Amarillo, Tex. (the office which approved the personnel actions in question) did not receive the new Whitten instructions until November 6, 1951. Interpretations of the law made by your office were received at much later dates.

Under the terms of the first Whitten rider, the Civil Service Commission could and did give advance approval to all three of the promotions. Approvals were given on the proper prescribed forms and the Bureau of Mines processed the actions on the assumption that the Civil Service had considered and approved the promotions.

Since the Bureau of Mines was called upon by defense agencies to meet increased demands for helium and had no source of supervisory employees to man their expanded operations other than to appoint from their own ranks, we feel that these promotions are entirely logical, justified, and the only way the positions could be filled. The three employees concerned have been fulfilling the duties of their positions in an excellent manner. The promotions were made in good faith and accepted in good faith by the employees. The employees are not responsible in any way for the corrective actions required. To call upon them for financial reimbursement at this late date would be unjust.

For your information we are quoting below pertinent portions of the Commission's inspection report:

GEORGE WILLIAMS

Promoted to foreman, helium-plant operator, GS–8, August 5, 1951.

Promoted to assistant superintendent, helium plant, GS–9, November 11, 1951.

Promoted to superintendent, helium plant, GS–11, January 4, 1953. (S. F. 59 approved by ninth regional office, CSC.)

It is recommended that the promotion to assistant superintendent, helium plant, GS–9, effective November 11, 1951, and the promotion to superintendent, helium plant, GS–11, effective January 4, 1953, be canceled. Promotion to assistant foreman, helium plant, GS–9, may be made, effective on or after August 5, 1952, insofar as Commission approval is concerned, subject to applicable decisions of the Comptroller General with respect to retroactive appointments.

The 14th civil-service region approved S. F. 59, August 13, 1951, extended October 29, 1951, for the promotion to assistant superintendent, GS–9.

HERMAN L. LOONEY

Promoted to foreman, helium plant operator, GS–9, December 18, 1950.

Promoted to superintendent, helium plant, GS–11, November 11, 1951.

It is recommended that the promotion to superintendent, helium plant, GS–11, effective November 11, 1951, be

canceled. Promotion to this position may be made, effective on or after December 18, 1951, insofar as Commission approval is concerned, subject to applicable decisions of the Comptroller General with respect to retroactive appointments.

The ninth civil-service region approved S. F. 59 on August 27, 1951, extended November 1, 1951, for the promotion to GS–11.

WILLIE C. PICKETT

Served in GS–8 positions continuously since 1946.

Promoted to superintendent, helium plant, GS–11, November 11, 1951.

It is recommended that the promotion to superintendent, helium plant, GS–11, effective November 11, 1951, be canceled. Promotion to assistant superintendent, helium plant, GS–9, may be made effective on or after November 11, 1951, and promotion to superintendent, helium plant, GS–11, may be made effective on or after 1 year from the effective date of the promotion to GS–9 mentioned above, insofar as Commission approval is concerned, subject to applicable decisions of the Comptroller General with respect to retroactive appointments.

The 14th civil-service region approved S. F. 59 on August 13, 1951, extended October 29, 1951 for the promotion to GS–11.

The Bureau of Mines effected these promotions in good faith upon the assumption that an approval by the 14th civil-service regional office of the Civil Service Commission received prior to the time these actions were taken was sufficient authorization. It was not until March 27, 1953, when the 14th civil-service region made a report on the inspection of the regional office at Amarillo conducted March 3–6, 1953, that the Bureau was aware of the discrepancy in effecting these promotions. The regional office of the Commission requested corrective action by April 27. After consultation between the Washington office of the Bureau of Mines and the Amarillo office the decision was reached to submit these cases to the central office of the Commission for approval as hardship cases under regulation 8.107 (j). On May 19, a letter was submitted to the central office of the Civil Service Commission recommending approval of the cases under regulation 8.109 (j) and the 14th United States Civil Service region agreed to extend the date set for corrective action until a reply was received from the central office of the Civil Service Commission. The Commission replied to this letter on August 20 stating that they could not approve these cases retroactively under regulation 8.109 (j). After further discussion with the 14th region, corrective action was taken on September 27.

The long delay in taking corrective action after the error was discovered was due largely to the searching and painstaking review of the matter by the central offices of both the Bureau of Mines and the United States Civil Service Commission. To avoid imposing a personal hardship on these employees as a result of an administrative error for which they were in no way responsible, the Bureau wanted to make certain that all the facts were adequately presented and the

Commission apparently wanted to make sure that all the legal and regulatory aspects were fully investigated and considered before arriving at a decision.

In view of the foregoing, we ask that the affected certifying officer be relieved of the necessity of collecting the payments which were made to the employees during the period from the dates of the original promotions to the time when the office took administrative action to correct the errors. To require a refund from these employees would in effect penalize them for an action over which they had no control (31 U. S. C., sec. 82c).

Sincerely yours,

D. OTIS BEASLEY,
Administrative Assistant Secretary of the Interior.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, May 5, 1954.

The honorable the SECRETARY OF THE INTERIOR.

DEAR MR. SECRETARY: Reference is made to letter of January 4, 1954, from the Administrative Assistant Secretary, requesting a decision as to whether the certifying officer may be relieved from the necessity of requiring refunds from 3 employees of the Helium Division, region VI, Bureau of Mines, Amarillo, Tex., in the amounts of $923.47, $66.90, and $466.57, respectively.

It appears that 3 employees were given promotions which the Civil Service Commission held subsequently to be in violation of the Whitten rider, section 1310 (c) of the act of November 1, 1951 (65 Stat. 758), requiring service in grade of 1 year before being promoted to the next highest grade or in some instances the next 2 higher grades. The promotions had been given civil-service approval October 29 and November 1, 1951, and were administratively authorized November 8, to be effective November 11, 1951. It is stated that the regional office did not receive the new Whitten rider instructions until November 6, 1951, and that the objection to the promotions in question was not brought to the attention of your department until a civil-service inspection in March 1953. Corrective action as recommended by the Civil Service Commission was not taken until September 27, 1953, due to the fact that the Bureau of Mines desired to make sure that all legal aspects were fully considered before final action.

In the letter of January 4 it is urged that collections should not be made from the employees on the ground, in substance, that under the terms of the first Whitten rider the Civil Service Commission could and did give advance approval to all three of the promotions and that the Bureau of Mines processed the actions on the assumption that the Civil Service Commission had considered and approved the promotions. Also, it is pointed out that the promotions were accepted by the employees in good faith; that they are not responsible in any way for the corrective actions required and that to call upon them for financial reimbursement at this late date would be unjust.

The first Whitten rider in effect prior to November 1, 1951 (64 Stat. 1066), contained no specific provision requiring any time in grade before promotion to a higher grade. However, in accordance with the general objective of that statute, the Civil Service Com-

mission amended its regulations effective December 1, 1950, to require 6 months' service in grade before an employee could be promoted to a higher grade, but permitting promotion of 2 grades at one time if he was being advanced from any grade below GS–10. The regulations (sec. 8.109) were further amended effective July 10, 1951, to provide, in pertinent part, as follows:

"(b) No person shall be appointed or promoted to a position in any grade from GS–6 to GS–11, inclusive (or equivalent) which is more than 2 grades, or to a position in grade GS–12, or higher (or equivalent) which is more than 1 grade above the lowest grade held by him in the Federal civil service within the preceding 6 months under indefinite or permanent appointment.

"(c) The Commission by prior general or specific approval may permit exceptions in the interest of the service to the restrictions in this section."

The submission of a proposed promotion to the Civil Service Commission for approval or even the approval by that agency prior to November 1, 1951, the effective date of the second Whitten rider (sec. 1310 of the act of November 1, 1951), may not be regarded as a promotion so as to satisfy the more rigid requirements of that statute which superseded the regulations of the Civil Service Commission in effect prior thereto. See departmental circular 671, supplement No. 2, dated December 14, 1951, issued by the Commission. That is to say, the promotions could not be consummated until placed in effect by the appointing authority. In the instant case before such action could be taken the above statute was enacted and became controlling on and after November 1, 1951.

As the promotions were in contravention of a restriction in a public law of which all persons are presumed to have knowledge, this Office is without authority to grant relief in these cases, irrespective of the fact that the employees were without fault in the matter (see 31 Comp. Gen. 305, 564). Accordingly, the employees should be instructed to make refunds of the excess salaries received during the period the erroneous promotions were in effect.

In view of the amounts involved the refunds may be permitted to be made in installments extending over a reasonable period of time.

Sincerely,

FRANK H. WEITZEL,
Acting Comptroller General of the United States.

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Calendar No. 1864

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1841

NATHAN L. GARNER

APRIL 24, 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 6282]

The Committee on the Judiciary, to which was referred the bill (H. R. 6282) for the relief of Nathan L. Garner, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to pay M. Sgt. Nathan L. Garner $1,600 with interest at the rate of 4 percent from November 10, 1954, and the sum of $110.22 in full settlement of all claims against the United States for his loss when his deposits in soldiers' deposits were never applied or returned to him.

STATEMENT

Master Sergeant Garner is a career soldier who has been a member of the United States Army since August 9, 1934. Through his years of service he deposited money in the soldiers' deposit system so that as of June 30, 1953, his balance was $6,600.

On July 29, 1953, he joined Headquarters Company, XVII Airborne Corps, Fort Bragg, N. C. While at that post his deposit accounts were not properly applied by the personnel officer whose duty it was to handle soldiers' deposits. Investigation disclosed that amounts aggregating $4,100 were not properly accounted for by the personnel officer, and were never credited to Finance Office records and the pay records of Master Sergeant Garner.

Master Sergeant Garner was able to recover $2,500 of his loss under the provisions of the Military Personnel Claims Act (59 Stat. 225;

31 U. S. C. 222c). This bill is for the balance due him under the soldiers' deposit system.

This proposed legislation was submitted by the Department of the Army to the Speaker of the House of Representatives with the recommendation of the Department of the Army.

The committee believes the legislation should be approved. This claimant was induced to deposit his savings with the Federal Government with the reasonable expectation that, not only would the principal be secure, but interest would accrue as advertised. As the result of irregularities in the handling of these deposits, claimant lost $4,100 and interest thereon from the date of deposit. His recourse as a matter of law was limited to a return of only a portion of his loss. In equity and justice, however, his recovery ought to be commensurate with his loss. Since this can only be accomplished by private legislation such as this, the committee recommends favorable consideration of this bill.

Attached is the communication of the Department of the Army.

DEPARTMENT OF THE ARMY,
Washington, D. C., May 5, 1955.

Hon. SAM RAYBURN,
Speaker of the House of Representatives.

DEAR MR. SPEAKER: There is enclosed herewith a draft of a proposed bill for the relief of Nathan L. Garner, which it is recommended be enacted into law. This proposed legislation is submitted by the Department of the Army in accordance with the procedures prescribed by the Secretary of Defense.

The purpose of this legislation is to provide for the payment of $1,600, plus all accrued interest, to M. Sgt. Nathan L. Garner, Mount Olive, N. C., for the loss sustained by him because certain deposits of his savings made at Fort Bragg, N. C., in 1953–54 to soldiers' deposits were never applied or returned to him by the responsible officer and for which he has not heretofore been fully compensated.

The records of the Department of the Army show that M. Sgt. Nathan L. Garner, RA6852930, was born at Mount Olive, N. C., on December 5, 1911. He enlisted in the United States Army on August 9, 1934, at the age of 22 years, 8 months, and since that time he has been a career soldier. He fought as a combat infantryman in the grade of corporal at Bataan and was taken prisoner there by the Japanese forces. Corporal Garner was a prisoner of war from April 9, 1942, to August 28, 1945, during which time he suffered physical deterioration from malnutrition and disease. Corporal Garner was liberated on August 28, 1945. The next day he was promoted to sergeant and shortly thereafter he was transferred to the United States for physical recoupment and reassignment. He was promoted to staff sergeant on June 8, 1948, to sergeant, first class, on November 30, 1948, and to master sergeant on September 11, 1953.

The monthly pay of Master Sergeant Garner is $304.20. He is married and has two children.

Early in his military career Master Sergeant Garner initiated a program of depositing a small portion of his pay each payday in soldiers' deposits, a system established by Congress whereby soldiers are permitted to deposit their savings. He deposited $25 on February 1, 1936, and, depending upon his financial ability, he continued the practice of making regular deposits, increasing the amount of deposits with advancement in grade. His balance as of June 30, 1953, amounted to $6,600.

Master Sergeant Garner joined Headquarters Company, XVIII Airborne Corps, Fort Bragg, N. C., on July 29, 1953, and thereafter he conducted his soldiers' deposit transactions with C. W. O. Robert M. Unchester, W907032, the personnel officer, who was officially authorized to handle the soldiers' deposits of personnel of the organization. On June 19, 1954, Mr. Unchester departed the organization for reassignment and the next day, June 20, 1954, irregularities regarding the handling of soldiers' deposits in the organization were discovered and brought to the attention of the military authorities.

This matter was duly investigated, and, on August 5, 1954, it was determined that contrary to established procedure, the personnel officer had retained in his custody the deposit book of Master Sergeant Garner, that the deposit book could not be located, and that certain sums submitted for deposit had not been credited properly. This investigation resulted in a recommendation for immediate enforcement of all safeguards relative to soldiers' deposits and that appropriate disciplinary action be taken in respect to the personnel officer who is presently confined in the post stockade, Fort Bragg, N. C., awaiting trial by court-martial under charges and specifications involving desertion, fraudulent enlistment, and larceny.

This investigation disclosed that Master Sergeant Garner turned over to the personnel officer for deposit in Master Sergeant Garner's soldiers' deposit account the following sums of money on the dates indicated and he received receipts for same (with exception noted) from the personnel officer:

Oct. 31, 1953	$200	This deposit was made during the period July–October 1953 and a receipt was obtained, but after a length of time the receipt was discarded.
Do	200	
Mar. 17, 1954	3,000	A redeposit of a previous withdrawal.
Mar. 31, 1954	500	
May 31, 1954	200	Date established, however receipt is undated

The investigation further disclosed that the above amounts, aggregating $4,100, were not returned to Master Sergeant Garner, were not properly accounted for by the personnel officer, and were never credited to the Finance Office records and the pay records of Master Sergeant Garner.

On September 28, 1954, Master Sergeant Garner filed a claim with the Department of the Army in the amount of "$4,100, plus interest till date of payment."

The claim was submitted under the provisions of Army Regulations No. 25–100, Subject: Claims, dated August 20, 1953, which states in pertinent part:

"3. CLAIM PAYABLE.—a. *General.*—Any claim falling within the statutory provisions of the Military Personnel Claims Act of 1945, as amended, not hereinafter excluded, may be submitted for consideration and in proper cases approved for payment in an amount not to exceed $2,500.

"b. *Examples.*—

* * * * * * *

"(5) MONEY.—When personal funds of personnel are accepted by personnel acting with authority of the unit or detachment commanding officer for safekeeping, soldiers' deposit, * * *, and such personal funds are neither applied as directed by the owner nor returned to him such losses are reimbursable when established by satisfactory evidence."

The only statute under which this claim could be considered by the Department of the Army was the Military Personnel Claims Act of 1945 (59 Stat. 225; 31 U. S. C. 222c), as amended by the act of July 3, 1952 (Public Law 439, 82d Cong.; 66 Stat. 321), which provides, among other things, that the amount which may be paid under such statute in any one case shall be limited to the sum "not in excess of $2,500." Prior to the enactment of the last-cited act there was no limitation with respect to the amount that might be paid by the Department of the Army to a claimant under the provisions of the Military Personnel Claims Act for the loss of money under circumstances such as presented in this case. In view of the limitation contained in the act of July 3, 1952, supra, the maximum amount in which this claim could be paid by the Department of the Army was the sum of $2,500. The claim, therefore, was dully allowed in the sum of $2,500, and a check in that amount was dispatched to Master Sergeant Garner on November 10, 1954. After the making of said payment there remains a loss sustained by the claimant of the sum of $1,600, coupled with the sum of $110.22 (interest on the certain sums aggregating $4,100, computed to November 10, 1954), and interest on the outstanding balance of $1,600, at the rate of 4 percent per annum from November 10, 1954, to the date of making final payment.

On November 9, 1954, Master Sergeant Garner advised the Department of the Army, in part, as follows:

"2. I will accept, as partial payment only, the sum of $2,500 which is to be mailed to me. I protest the decision to pay only the reduced amount, and request that, * * * the file in this matter be forwarded to the Secretary of the Army for the purpose of bringing it to the attention of Congress for consideration.

"3. I further protest the disapproval of my claim for interest. Under the terms of the soldier's deposit agreement, interest at the rate of 4 percent is to

accrue on all deposits after 6 months. The interest that has accrued, and is accruing, is part of the principal of my claim, and should be paid together with the return of the principal. I am not seeking interest on the amount of the claim. I am only claiming that the terms of the soldier's deposit agreement be met, and that I be made whole on the loss."

The attitude of this claimant relative to the loss of his savings is natural and expected. The practice of economy and utilization of savings plans have been emphasized in the military. Members of the Army, Navy, Air Force, Marines, and Coast Guard have been informed as to the merits of savings plans including service deposits (soldiers' deposits) and advised:

"Speaking of soundness, you can be sure that the various plans for your future economic safety offered by virtue of your being a member of the Armed Forces are completely sound. For behind each such plan stands, as your guarantor against loss, the full strength of the United States Government." (Armed Forces Information Pamphlet, No. 4, December 11, 1953.)

Congress established the soldiers' deposit system on May 15, 1872. In effect, a Federal facility was established whereby enlisted members of the Armed Forces were permitted to build up a money reserve with interest while in uniform. The rules have changed but little over the years relative to the basic requirements that the deposits of enlisted men must be made to a properly authorized officer; that the deposits must be made in cash; that the deposits may be in any dollar amount not less than $5; that a deposit book shall be furnished the depositor; and that an interest rate of 4 percent per annum shall be paid for any sums not less than $5 deposited for a period of 6 months or longer. (10 U. S. C. 906, 907; 68 Stat. 485; 10 U. S. C. A. sec. 908 a and b.)

The receipts issued to this claimant do acknowledge the receipt of money from the depositor for deposit with the United States. They are substantially certificates of deposit and obligations or securities of the United States. The law imports the time and conditions of repayment (*Neall* v. *U. S.* ((Cal. 1902) 118 F. 699, 56 C. C. A. 31). As to the matter of interest, the general rule is that the United States is not liable for interest on its obligations except where interest is stipulated for in legal and proper contracts, or where the allowance of interest is specifically directed by statute (27 Comp. Gen. 691).

M. Sgt. Nathan L. Garner has had a long and honorable career in the United States Army. It would be a rather severe hardship for him to bear the loss of any part of his soldiers' deposits or interest incident thereto. It is the view of the Department of the Army that, under the facts and circumstances, this claimant is justly and equitably entitled to recover the full amount of the loss sustained by him. The Department, accordingly, recommends the enactment of this proposed legislation granting an award to the claimant in the sum of $1,600 and providing for full payment of interest.

The cost of this bill, if enacted, will be $1,600, together with interest at the rate of 4 percent per annum from November 10, 1954, to the date of final payment and the sum of $110.22, representing accrued interest on certain deposits to November 10, 1954.

The Bureau of the Budget advises that there is no objection to the submission of the proposed bill for the consideration of the Congress.

Sincerely yours,

ROBERT T. STEVENS,
Secretary of the Army.

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Calendar No. 1865

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1842

CHARLES F. BULLETTE

APRIL 24, 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 2338]

The Committee on the Judiciary, to which was referred the bill (H. R. 2338) for the relief of Charles F. Bullette, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

AMENDMENT

On page 2, lines 1 and 2, strike the words "in excess of 10 per centum thereof".

PURPOSE

The purpose of the proposed legislation, as amended, is to pay to Charles F. Bullette, of Racine, Wis., the sum of $297.21 in full settlement of all claims against the United States as payment of hospital and medical expenses incurred from August 24, 1953, through September 5, 1953.

STATEMENT

The facts in connection with this claim are set forth in House Report No. 525 on H. R. 2338, as follows:

Mr. Charles F. Bullette entered active service with the United States Army on August 2, 1940, and was discharged on November 3, 1943, because of acute pulmonary tuberculosis. Upon application, Mr. Bullette was granted disability compensation by the Veterans' Administration based on tuberculosis incurred in World War II which payment commenced the day following his discharge date.

Mr. Bullette was hospitalized in a private hospital on August 24, 1953, for the removal of a cyst from his back. He was operated on the following day, and was discharged on August 26, 1953. When he entered the hospital the cyst was diagnosed and surgically treated without the knowledge that the cyst was tuber-

culous. At the time of his entry into the hospital Mr. Bullette thought that his private hospitalization would cover the cost. On August 28, 1953, he had to return to the hospital and the site of the surgery was found to be infected. Subsequent pathological examination disclosed the tuberculous nature of the cyst Thus the condition was related to Mr. Bullette's service-connected disability. However, the Veterans' Administration refused to pay for Mr. Bullette's hospitalization. As noted in the report of the Veterans' Administration which is appended to this report, that refusal was based on the fact that Mr. Bullette had not complied with Veterans' Administration requirements concerning payment for medical treatment in other than Veterans' Administration facilities.

The committee concludes that Mr. Bullette was not able to take the steps outlined by the Veterans' Administration because he was not aware that the cyst was related to his service-connected tubercular condition. The fact that the cyst was tubercular was only established by the subsequent pathological report. Under these circumstances the committee recommends the favorable consideration of the bill.

This veteran has an 80 percent service-connected disability based on tuberculosis, pulmonary, chronic, far advanced, inactive pneumonectomy, and for removal of eight ribs. Under these circumstances and after consideration of the facts as set forth in the House report, the committee concurs in the conclusions therein contained and, therefore, recommends that the bill, H. R. 2338, as amended, be considered favorably.

The bill has been amended so as to eliminate the payment of an attorney's fee from the award provided in this legislation.

Attached hereto and made a part hereof is a letter from the Office of the Administrator of Veterans' Affairs to Hon. Emanuel Celler, Chairman of the House Judiciary Committee, dated March 30, 1955, together with other data submitted in connection with this claim.

VETERANS' ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR OF VETERANS' AFFAIRS,
Washington, D. C., March 30, 1955.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR MR. CELLER: This has further reference to your request for a report by the Veterans' Administration on H. R. 2338, 84th Congress, a bill for the relief of Charles F. Bullette, which provides as follows:

"That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Charles F. Bullette, Racine, Wisconsin, the sum of $297.21, as payment of hospital and medical expenses incurred from August 24, 1953, through September 5, 1953. The payment of such claim shall be in full settlement of all claims of said Charles F. Bullette against the United States on account of medical, hospital, and other expenses incurred as a result of such illness: *Provided*, That no part of the amount appropriated in this act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000."

Evidence of record discloses that Charles F. Bullette entered upon active service with the United States Army August 2, 1940, and was honorably discharged on November 3, 1943, on a certificate of discharge for disability on account of acute pulmonary tuberculosis, right upper lobe.

Upon application, Mr. Bullette was granted disability compensation by the Veterans' Administration commencing the day following the date of his discharge from service by reason of the tuberculosis incurred in service in World War II. At the present time Mr. Bullette is receiving compensation at the rate of $181 per month.

Upon his discharge from service Mr. Bullette was afforded medical care and treatment for the service-connected disability in a Veterans' Administration hospital for an extensive period. In response to the veteran's request the Veterans' Administration also authorized medical care and treatment in private hospitals at Government expense. On several occasions when the veteran's condition required emergency treatment at private hospitals without prior authorization, the Veterans' Administration approved payment at Government expense of such medical expenses. In those instances the claims satisfied the conditions, hereinafter discussed, under which such payments may be made.

On one occasion, however, a claim by Mr. Bullette for reimbursement of the cost of unauthorized medical expenses incurred in March 1951 was disallowed since it was determined by the Veterans' Administration that the treatment in question was not provided in a medical emergency. In a letter dated November 2, 1951, Mr. Bullette was advised of the disallowance of his claim and told of the conditions under which payment or reimbursement for cost of unauthorized treatment could be made. The veteran was also advised of his right to appeal to the Administrator of Veterans' Affairs. No appeal from such disallowance was taken by Mr. Bullette.

In an application dated September 28, 1953, the veteran requested of the Veterans' Administration authority for outpatient treatment of a service-incurred disease. A statement by Dr. Frank J. Scheible, also dated September 28, 1953, submitted by Mr. Bullette in support of his claim discloses that the veteran was examined by Dr. Scheible on August 6, 1953, for treatment of a cyst on his back. He was hospitalized at St. Luke's Hospital, Racine, Wis., August 24–25, 1953, at which time the cyst was removed. The site of the surgery became infected and he was rehospitalized at St. Luke's Hospital for the period August 28 to September 4, 1953. A pathological report disclosed that the cyst was tuberculous. Thereafter Dr. Scheible submitted a bill for $107 which represented his fee for surgery and treatment covering a period from August 25, 1953, to October 5, 1953. Since existing Veterans' Administration procedure allows 15-day retroactive authorization for outpatient care, authority for Dr. Scheible's services at Government expenses was granted effective from September 13, 1953 (15 days prior to the date of the mentioned application for treatment).

On October 20, 1953, Mr. Bullette requested that the cost of his hospital treatment be paid by the Veterans' Administration. This claim for unauthorized services and medical care incident to his hospitalization in August and September was disallowed by the Veterans' Administration since the expenses were not incurred in a true emergency when no Government facilities were feasibly available to furnish suitable care, and where delay would have been hazardous to health or life. Mr. Bullette was notified of this determination by letter dated November 23, 1953, and was advised of his right to appeal to the Administrator of Veterans' Affairs.

The veteran appealed the disallowance of his claim and the Board of Veterans' Appeals in a decision dated April 1, 1954, denying the appeal, held that the unauthorized treatment was not shown to have been emergent within the meaning of Government regulations.

All eligible veterans suffering from service-connected disabilities have a right to be afforded necessary medical care and treatment by the Veterans' Administration, including outpatient treatment, and if beds are not available in Veterans' Administration hospitals or other Federal hospitals which have agreed to accept veterans, arrangements may be made to place them in suitable State, county, municipal, or private hospitals at Government expense. Supplementing this broad medical program is authority for payment or reimbursement of medical expenses for medical treatment, including the necessary traveling incidental thereto, obtained without prior authorization from the Veterans' Administration, under the following conditions:

(1) It must be shown by decision of an adjudicative agency of the Veterans' Administration that the disability from the disease or injury for which treatment had been rendered was service-connected, or determined by medical officers of the Veterans' Administration as aggravating a service-connected disability.

(2) The treatment must have been rendered in a medical emergency.

(3) Government facilities must have been not feasibly available.

(4) Delay would have been hazardous.

All these elements must have existed and if any was lacking, reimbursement cannot be authorized. Moreover, no reimbursement or payment of unauthorized medical treatment will be made when procured by a claimant through private sources in

preference to available Government facilities. In the present case, inasmuch as Mr. Bullette did not meet the requirements for the payment of unauthorized medical expenses outlined above, there is no authority for the payment of the claims presented.

Regarding the sum, $297.21, which is proposed to be paid by the bill, it is deemed pertinent to state that had the requirements for entitlement to reimbursement of or payment for unauthorized medical expenses been met in this case, which they were not, payment would have been made in accordance with prescribed standards. Since there is no basis under existing regulations for the payment of this claim, the Veterans' Administration has not undertaken to determine whether the amount set forth in the bill would have been payable under such prescribed standards.

The enactment of H. R. 2338 would be discriminatory in that it would remove the claim of Mr. Bullette from the provisions under which payment for reimbursement of cost of unauthorized medical expenses has been or would be denied in cases similarly circumstanced. It would constitute a precedent for similar proposals in behalf of other claimants. Furthermore, it appears that the adoption of the principle of this bill might, in effect, be an incentive to veterans to engage the services of private physicians and hospitals, with the Government ultimately paying the costs thereof, and to disregard medical care and treatment which the Government affords through the Veterans' Administration, the quality of which ranks with the best and most modern available.

The Veterans' Administration does not believe that private bills of this nature should receive favorable consideration.

Advice has been received from the Bureau of the Budget that there would be no objection to the submission of this report to your committee.

Sincerely yours,

H. V. HIGLEY, *Administrator.*

[True copy of decision—Board of Veterans' Appeals]

VETERANS' ADMINISTRATION

BOARD OF VETERANS' APPEALS

APRIL 1, 1954.

Charles F. Bullette
1520 Blaine Boulevard
Apartment 6
Racine, Wis.

Claim No. C-3 433 605
Docket No. 267 941

Public No. 2, 73d Congress, as amended. WW II. Reimbursement. Denied.
Appellant represented by: Veterans of Foreign Wars of the United States.

QUESTION AT ISSUE

Entitlement to reimbursement or payment for unauthorized medical services.

CONTENTIONS

The veteran has stated that he was hospitalized August 24–25, 1953, for removal of a cyst from his back; that about 3 days later he became very ill and returned to his physician who determined that the site of surgery had become infected; that he reentered the hospital on August 28, 1953, for treatment of the infected operative site and remained hospitalized until September 4, 1953; that while hospitalized pathological report disclosed that the cyst was tuberculous. It was further stated that at the time he entered the hospital it was not known by him or the physician that the cyst was tuberculous and therefore application for Veterans' Administration hospitalization was not made; that hospital insurance was carried and it was assumed that the medical expenses for treatment of the cyst would be paid by the insurance company but when it was established that the cyst was tuberculous the insurance company refused to pay for the cost of the services on the ground that treatment was for a service-connected condition. It is contended that under the circumstances reimbursement or payment should be made. It is also contended that service connection should be granted for postoperative residuals of cyst or that an increased rating is in order for pulmonary tuberculosis.

OUTLINE OF MATERIAL EVIDENCE

Claim for reimbursement or payment has been received from the veteran for an undisclosed amount representing the cost of treatment for tuberculous cyst in August and September 1953.

Frank J. Scheible, M. D., has stated in effect that at the time the cyst was diagnosed and surgically treated the tuberculous nature of the cyst was not known and that the true nature of the cyst was disclosed after pathological examination and report thereof was received at which time further treatment was carried out and the Veterans' Administration was notified.

Records show that the veteran notified the Administration as to treatment of the cyst on October 20, 1953, at which time he also amended his claim to include service connection for this condition or to obtain an increased rating for pulmonary tuberculosis.

Service connection has been granted for tuberculosis, pulmonary, chronic, far advanced, inactive pneumonectomy, and for removal of eight ribs, a combined rating of 80 percent being currently assigned.

ESSENTIAL ELEMENTS FOR ENTITLEMENT

For entitlement to reimbursement or payment it must be shown that the unauthorized expenses were incurred in an emergecy, for the relief of a service-connected disability, that no Government facilities were feasibly available, and that delay would have been hazardous to the health or life of the veteran. All of these elements must have been present and, if any one was lacking, reimbursement or payment may not be made.

DISCUSSION AND DECISION

Apart from the question of service connection or the availability of Government facilities, the unauthorized treatment is not shown to have been emergent, within the meaning of governing regulations. Statements in support of the appeal would not permit favorable consideration for purposes of reimbursement or payment unless all essential elements were present. Since it is not shown that treatment was emergent all prerequisites for entitlement have not been met and there is no authority whereby the Board may authorize reimbursement or payment. The appeal is denied.

It is noted that no determination has been made by the agency of original jurisdiction with respect to the question of entitlement to service connection for operative residuals of cyst or for an increased rating for pulmonary tuberculosis. Therefore, appellate jurisdiction on this matter is not assumed by the Board at this time.

LAWRENCE R. PIERCE, Jr.,
B. F. KOCH,
THOMAS C. DYAR,
Associate Members.

FRANK J. SCHEIBLE, M. D.

632 High Street Racine, Wis.

OFFICE HOURS BY APPOINTMENT

Dial 4–1224

MAY 21, 1954.

Mr. Charles Bullette,
1520 Blaine Avenue,
Racine, Wis.

For professional services:

Aug. 25, 1953.	Surgery	$50
Aug. 26, 1953.	Hospital visit	3
Aug. 28, 1953.	Office visit	3
Aug. 29, 1953, through Sept. 5, 1953.	Hospital visits, 8, at $3	24

Since September 8, 1953, the patient has been coming twice weekly for strep injections. The charge each time is $3.

ST. LUKE'S HOSPITAL, RACINE, WIS.

Date shown is date of posting and may not be date service was rendered

Name: Mr. Charles Bullette, Jr. Room No. 305
Address: 1520 Blaine Blvd. Rate, $13

Aug. 24, 1953, to Aug. 26, 1953

Date	Explanation	Charges	Credits	Balance [1]
Aug. 24, 1953	Semiprivate room	$13.00		
Do	Medicine	.05		
Do	Laboratory	3.25		
Do	do	8.50		$24.80
Aug. 25, 1953	Semiprivate room	13.00		
Do	Medicine	.34		
Do	X-ray	8.50		
Do	Laboratory	10.00		
Do	Operating room	15.00		
Do	Anesthesia	2.00		73.64

[1] Last amount in this column is balance due.

Please keep this statement; no other will be issued

ST. LUKE'S HOSPITAL, RACINE, WIS.

Date shown is date of posting and may not be date service was rendered

Name: Mr. Charles Bullette Room No. 409
Address: 1520 Blaine Avenue Rate, $14
For: Self.

August 28, 1953, to September 5, 1953—8 days

Date	Explanation	Charges	Credits	Balance [1]
Aug. 28, 1953	Semiprivate room	*$14.00		
Do	Medicine	*.05		*$14.05
Aug. 29, 1953	Semiprivate room	*28.00		
Do	Medicine	*.07		
Do	do	*.05		
Do	do	3.00		*45.17
Aug. 31, 1953	Semiprivate room	14.00		
Do	Medicine	*4.54		
Do	do	*9.54		*73.25
Sept. 1, 1953	Semiprivate room	14.00		
Do	Medicine	*.05		
Do	do	*.84		
Do	do	*.72		88.86
Sept. 2, 1953	Semiprivate room	14.00		
Do	Medicine	*.05		
Do	Dressings	*.50		
Do	Medicine	*6.00		*109.41
Sept. 3, 1953	Semiprivate room	*14.00		
Do	Medicine	*3.00		
Do	do	*.05		*126.46
Sept. 4, 1953	Semiprivate room	*14.00		
Do	Medicine	*6.00		
Do	do	*.05		*146.51
Sept. 5, 1953	Telephone	*1.00		
Do	Medicine	*3.56		
Do	Allowance		*$7.50	*143.57

[1] Last amount in this column is balance due.

Please keep this statement; no other will be issued. See other side for "Explanation of charges."

EXPLANATION OF CHARGES

*Treatment appliance: Includes enema tray, catheter tray, sitz bath, perineal light, etc.

AUGUST 28, 1953.

I hereby authorize and request the Continental Assurance Co. to pay the amount due me in my claim for hospital benefits under my hospitalization insurance directly to St. Luke's Hospital, Racine, Wis., by reason of hospitalization furnished to self.

CHARLES BULLETTE, Jr.

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Calendar No. 1866

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1843

GILES P. FREDELL AND WIFE

APRIL 24, 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 2717]

The Committee on the Judiciary, to which was referred the bill (H. R. 2717) for the relief of Giles P. Fredell and wife, having considered the same, reports favorably thereon, with an amendment, and recommends that the bill, as amended, do pass.

AMENDMENT

On page 1, line 7, strike the figure "$464.78" and insert in lieu thereof the figure "$458.17".

PURPOSE OF AMENDMENT

The purpose of the proposed amendment is contained in the letter from the Acting Secretary of the Department of Agriculture dated December 28, 1955, which is appended to this report.

PURPOSE

The purpose of the proposed legislation, as amended, is to waive the payment of interest in the amount of $458.17 on a promissory note executed by Giles P. Fredell and his wife for funds advanced by the Farmers' Home Administration, which funds were never used by the claimants, by reason of a dispute which later arose concerning the feasibility of the project involved.

STATEMENT

On June 2, 1952, a loan was made to Giles P. Fredell and his wife in the amount of $11,400 by the Farmers' Home Administration for

the purpose of repair of a water well on the Fredell farm. The loan funds so advanced by the Government were deposited in a bank account subject to withdrawal upon the countersignature of the Farmers' Home Administration county supervisor. Construction plans satisfactory to both the Government and the borrower could not be developed and permission for the use of loan funds was withheld. A test of the existing well on the Fredell farm showed the yield of water to be about half enough to meet farm-irrigation requirements, and geological and engineering reports were unfavorable as to the possibility of obtaining adequate water from a new well. On the basis of such information, it was determined that the drilling and equipping of a new well would not be feasible, since an adequate supply of water could not be obtained without excessive costs. Consequently, on September 28, 1953, the total amount of the principal of the loan was returned by the borrower for application on his debt to the Government. However, during the period the loan funds were on deposit, interest in the aggregate amount of $458.17 accrued at the rate of 3 percent per annum. This legislation would waive payment of this amount.

The Department of Agriculture in reporting on this legislation states that the Department favors enactment of the bill. The report further states that the waiving of accrued interest is considered to be desirable in view of the circumstances and because of the lack of authority by the Secretary of Agriculture to adjust or modify the existing agreement with the borrower relieving him of all or any part of this debt.

The committee has come to the conclusion that the circumstances of this case are such that Mr. Fredell and his wife should be relieved of the responsibility to pay the interest charge on the loan. Mr. Fredell and his wife never did receive any benefit from the money. The account remained subject to Government control in that payment from the account could only be made after Government approval of construction plans was given and that approval was never obtained. The amount of the loan was returned, at the request of the borrowers, to the Government on September 28, 1953. The committee therefore concurs with the recommendation of the Department of Agriculture and recommends favorable consideration of the bill, as amended.

Attached hereto and made a part of this report is the report of the Department of Agriculture dated April 7, 1955, hereinbefore referred to, together with a letter from Mrs. G. P. Fredell, dated October 28, 1953.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, April 7, 1955.

Hon. EMANUEL CELLER,
Chairman, Judiciary Committee,
House of Representatives.

DEAR CONGRESSMAN CELLER: This is in reply to your request of February 5, 1955, for a report from this Department on H. R. 2717, a bill for the relief of Giles P. Fredell and wife.

We favor the enactment of H. R. 2717. The waiving of accrued interest as proposed is considered to be desirable in view of the circumstances and because of the lack of authority by the Secretary of

Agriculture to adjust or modify the existing agreement with the borrower, relieving him of all or any part of this debt.

This bill proposes to waive interest in the amount of $464.78 which accrued during the period of June 2, 1952, through September 28, 1953, on funds advanced to Giles P. Fredell and his wife by the Farmers' Home Administration pursuant to the Water Facilities Act of August 28, 1937, as amended. The bill further authorizes and directs the Secretary of Agriculture to cause proper entries to be made in the accounting records of the Department of Agriculture to establish such waiver.

On June 2, 1952, a loan in the amount of $11,400 was advanced to Giles P. Fredell and his wife by the Farmers' Home Administration pursuant to the Water Facilities Act of August 28, 1937. The purpose of this loan was the repair of an existing water well on the Fredell farm. On September 28, 1953, the total amount of the principal of the loan was returned by the borrower for application on his debt to the Government.

The loan funds advanced by the Government were deposited in a bank account subject to withdrawal upon the countersignature of the Farmers' Home Administration county supervisor. Construction plans satisfactory to both the Government and the borrower could not be developed and permission for the use of loan funds was withheld. A test of the existing well showed the yield of water to be about half enough to meet farm irrigation requirements and geological and engineering reports were unfavorable as to the possibility of obtaining adequate water from a new well. On the basis of such information, it was determined that the drilling and equipping of a new well would not be feasible since an adequate supply of water could not be obtained without excessive cost.

Difficulties incurred in testing the existing well and obtaining the technical data relative to the water supply delayed the determination with respect to the use of the loan funds. The return of the loan funds for application on the indebtedness was further delayed by the borrower's failure to recognize that, in the absence of a proven and adequate water supply, satisfactory construction plans could not be developed, thereby permitting the use of the loan funds. During the period the loan funds were on deposit, interest in the aggregate amount of $464.78 accrued at the rate of 3 percent per annum.

The Bureau of the Budget advises that, from the standpoint of the program of the President, there is no objection to the submission of this report.

Sincerely yours,

TRUE D. MORSE, *Acting Secretary.*

COTTONWOOD, CALIF., *October 28, 1953.*

EDMUND M. MOOR,
Attorney at Law, Red Bluff, Calif.

DEAR SIR: As you have talked with Dave Jones, head of the Farmers' Home Administration in Red Bluffs, Calif., and are familiar with this case, we are writing to you, and wish you to submit this letter to the head office, Washington, D. C.

We have a ranch 11 miles west of Cottonwood in Tehama County on Bowman Road. In 1951 we went into your office, 201 Federal Building, Red Bluff, Calif., and asked for a loan.

On June 2, 1952, we went with Dave Jones down to Tehama Title Co. and mortgaged our ranch to secure this loan, $11,400 (Loan Code No. 153–1) and paid $72 to have it recorded. This loan was to produce water and green pasture on our ranch. From that day on it has been a worry.

They had the well tested to see amount of water there and then dry-iced the well and pumped it 45 minutes. The test proved more water before they dry-iced it.

Dave Jones said there [would] be no interest on the money until the project was finished.

I have called their office and got nowhere. Every time I have seen Mr. Jones I have had to make 3 or 4 trips and phone calls and it was the same old story trying to get a man out there to check for water, which we never did see.

About 9 or 10 months ago I called Mr. Jones and asked him to send the money back if they were not going to do the work, and he asked Mr. Fredell to come up and sign for it.

Mr. Fredell called at his office and it was the same story of the man coming to check for water.

I finally run into Mr. Jones, downtown, and ask him again to send the money back and he told me to bring Mr. Fredell and come on up to his office which we did a few days later and, as usual, we made a couple of calls to no avail.

Some 3 weeks later we were in town and phoned Mr. Jones and made a date to see him. We went up to his office at the time he ask us to, and found him out to lunch. We came back again and he was still out. So we waited in the post office until he came back and went up to his office with him. The money was returned September 28, 1953.

Now he tells us we have to pay the interest on this money which they would not use and would not let us use.

We are just poor people and had managed to pay for this place and thought the Home Administration was for our kind of people to help them over a tight spot, and this is the spider web we get into. If the money had been used we could have derived something from it's use to have paid the interest, but as it is the only way we can pay the interest is to borrow the money on the ranch and that puts us in a worse shape than we were 2 years ago.

Two years of waiting and paying interest on money they would not use or let us use.

I am writing to you hoping in some way you can help us out. If not, maybe you can see there some law made to protect other innocent poor people from suffering as we are.

Yours very truly,

Mrs. G. P. FREDELL.

DEPARTMENT OF AGRICULTURE,
Washington 25, D. C., December 28, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Senate Judiciary Committee,
United States Senate, Washington, D. C.

DEAR SENATOR KILGORE: On April 7, 1955, this Department submitted a report to the chairman of the Judiciary Committee of the House of Representatives on H. R. 2717, a bill for the relief of Giles P. Fredell and his wife.

We have noted a discrepancy between the amount of interest specified in H. R. 2717 and the actual amount of interest owed by Mr. and Mrs. Fredell on the $11,400 loan which was advanced to them by the Farmers' Home Administration on June 2, 1952. H. R. 2717 specifies the amount of $464.78 whereas the actual amount accrued during the period of June 2, 1952, through September 28, 1953, on the funds advanced to Giles P. Fredell and his wife, is $458.17. We wish, therefore, to supplement our report of April 7 to suggest that the correct amount be inserted in H. R. 2717.

Sincerely yours,

TRUE D. MORSE, *Acting Secretary.*

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Calendar No. 1867

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1844

DAVID J. DAZÉ

APRIL 24, 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 2924]

The Committee on the Judiciary, to which was referred the bill (H. R. 2924) for the relief of David J. Dazé, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

AMENDMENT

On page 2, lines 2 and 3, strike the words "in excess of 10 per centum thereof".

PURPOSE

The purpose of this proposed legislation as amended, is to authorize payment to David J. Dazé (Veterans' Administration No. C–4107517), of Los Angeles, Calif., the sum of $1,000. The payment of such sum shall be in full settlement of all claims of the said David J. Dazé against the United States arising when, in order to preserve his eyesight, it was necessary for him to incur expenses for private surgical treatment of a service-incurred disability which could not be promptly provided by the Veterans' Administration.

STATEMENT

This bill, if enacted, would pay David J. Dazé the sum of $1,000, which sum would reimburse him for the amount he paid a private physician and surgeon for successfully removing a foreign body from his eye, the foreign body in his eye being occasioned by a wound sustained in action on January 23, 1945, while engaged in battle with

the enemy of the United States, and for the removal of a traumatic cataract likewise occasioned by the same circumstances.

The Veterans' Administration contends that this bill should not be approved. The Veterans' Administration admits that this veteran's disability was service connected, and that loss of useful vision was sustained, and that the foreign body was not removed from the eye of this soldier when treated in France. Nevertheless, the Veterans' Administration contends that on September 16, 1946, the veteran informed the Veterans' Administration that he planned to have a private physician and surgeon remove the foreign object from his eye, and that he expected the Veterans' Administration to pay the cost of the surgery. Also, that the Veterans' Administration informed the veteran that facilities were available for an eye operation, and that he could report to the Veterans' Administration any time for hospitalization, and, therefore, the Veterans' Administration would not be liable for any expenses incurred by receiving services from a private source. The Veterans' Administration says that the veteran acknowledged on September 21, 1946, that he had been informed that Veterans' Administration facilities were available, but that he preferred private care, and that he would procure the services of a private surgeon and expected the Veterans' Administration to pay the cost thereof. The Veterans' Administration says that on September 23, 1946, the veteran personally called at the outpatient department, Veterans' Administration Hospital, Los Angeles, and was referred to the eye, ear, nose, and throat clinic at that hospital, where, after an examination, hospitalization was recommended, and that the veteran declined hospitalization, saying that he would not be satisfied to have anyone operate other than the private surgeon then caring for him, and he was going to secure the services of that private surgeon, and he expected the Veterans' Administration to pay the cost thereof. The Veterans' Administration states that the veteran was then told that if he changed his mind he could return to the Veterans' Administration hospital where he would be afforded necessary hospitalization and medical care and that no further communication was received from the veteran, except that the Veterans' Administration has information that on September 25, 1946, an operation for removal of that foreign body from the eye of the veteran was performed by a certain private physician.

The Veterans' Administration sets out four elements that must be present before expenses incurred by this veteran could be paid, namely: (1) That the claim must be service-connected and so adjudicated, (2) the treatment must have been rendered in a medical emergency, (3) Government facilities must have been not feasibly available, (4) delay would have been hazardous.

The record shows that this young veteran suffered the loss of his right eye in battle. His left eye and the only remaining eye was injured by the splinter or foreign substance as a result of battle. The veteran was operated on in Government hospitals in an attempt to remove that foreign substance, but it was not removed, and the Army doctors decided an attempt to remove that substance was too dangerous, and that it might result in the loss of that eye. The record further shows that this veteran was sent to hospitals in England, New York, and El Paso, where the decision not to attempt to remove that substance was adhered to, and that Army doctors gave

him no comfort whatever, except that he was advised to pray that the metal "becomes incapsulated and does not act up." Further, that this veteran made weekly trips to a civilian doctor as an outpatient under Veterans' Administration auspices, and made visits to Birmingham General Hospital, and made one visit to Sawtelle, which ended with his record being mixed with the record of a psychopathic patient of World War I who had a similar name. In September 1946, this young man, after suffering for about 18 months, went to a Dr. Lordan, and this doctor found that a traumatic cataract had begun to form, and found a definite formation in the lens, presumably rust. Dr. Lordan advised this veteran that he must have an operation, and that any delay might entail the losing of that eye, because of advanced citerosis. The veteran contacted Dr. Cordez, head of the University of California School, and this doctor verified Dr. Lordan's diagnosis and insisted on speed. Dr. Lordan states that he was then on the teaching staff of the University of Southern California and that his services were being mainly used for the benefit of the veterans of the Los Angeles area. Consequently, he was informed of the inadequate staff in the eye service at the veterans' hospital there. The Veterans' Administration wanted this veteran to be hospitalized under penalty of not receiving private aid. Dr. Lordan states that under the circumstances, this veteran was reluctant to risk the vision in his remaining eye to military management, and it would seem that this unwillingness was abundantly justified. The record shows that despite the advice of Drs. Lordan and Cordez, this veteran did go to the Veterans' Administration Hospital at Los Angeles, but all that he obtained was simply a recommendation that he be hospitalized. This veteran needed an operation and he needed it then and there, as he wanted to retain the slight vision of his left eye so that darkness would not be complete.

From the entire record in this case, it would appear that the four grounds set up by the Veterans' Administration for the rejection of this claim, or any of these grounds are not justified. The injury is admitted to be service connected. The treatment certainly was rendered in a medical emergency, for here was a young man appearing before the Veterans' Administration in great pain, and with advice that speed was of the essence in getting to a competent surgeon, if he wanted to save his eye. The records show that this veteran went to the Veterans' Administration despite all of this, and no operation was suggested. All he was offered was hospitalization. Government facilities certainly were not "feasibly available." "Feasible" means "capable of being dealt with successfully," or "capable of being done or effected." There is no record whatsoever that there were any Veterans' Administration facilities suggesting that a speedy operation could be successfully performed at a Veterans' Administration hospital. Perhaps the Veterans' Administration could not be expected to keep on its staff and available surgeons of such skill as was imperative if this young man was to receive successful treatment. It is apprehended, however, that such could be the reason for the provision in the law that in some cases the services of a private surgeon could be obtained and the expenses thereof paid by the Government.

The committee has evidence in its files to show that the claimant has expended well over $1,000 in connection with this operation.

It is recommended that this bill, as amended, be reported favorably.

BEVERLY HILLS, CALIF.

Re David Dazé.

Congressman GORDON MCDONOUGH,
Washington, D. C.

DEAR SIR: Mr. Dazé was first seen in my office September 12, 1946, at which time examination revealed the following:

Right eye: Best corrected vision, 6/80, due to central retinal damage as a result of injury during military service.

Left eye: Best corrected vision, 6/25, due to trauma caused at the same time.

A removal of a foreign body (shrapnel) was attempted in the military hospital in Paris prior to the patient's return to the United States, but was unsuccessful. The visual acuity in this eye (left) at that time was reported to be 20/20, which we assume was a contributing factor in supposing that the difficulty was "a non-magnetic foreign body." This assumption was also made by two local ophthalmologists. However, when seen here in September 1946, it was apparent that a traumatic cataract had begun to form, as well as a definite formation in the lens, presumably rust. At that time, I was on the teaching staff at the University of Southern California, my services being mainly for the benefit of the veterans of the Los Angeles area. Consequently, I was informed of the inadequate staff in the eye service at the veterans' hospital here. Mr. Dazé, therefore, was reluctant to risk the vision in his remaining eye to military management, after the previous unsuccessful attempt at removal of the foreign body in the military-type hospital.

The foreign body was successfully removed with a magnet at St. Vincents Hospital on September 25, 1946. The traumatic cataract was extracted on May 18, 1949. He has subsequently been fitted with a corneal contact lens for the left eye, which gives him 20/30— vision in that eye.

Urgency for the immediate surgical attention in September 1946 and the patient's justifiable reluctance to subject his remaining vision to military management are the reasons, as outlined above, for his decision to remain in my care.

Very truly yours,

JOHN P. LORDAN, M. D.

VETERANS' ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR OF VETERANS' AFFAIRS,
Washington, D. C., November 7, 1951.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR MR. CELLER: This has further reference to your request for a report by the Veterans' Administration on H. R. 5461, 82d Congress, a bill for the relief of David J. Dazé, which provides as follows:

"That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to David J. Dazé (Veterans' Administration number C–4107517), of Los Angeles, California, the sum of $1,000. The payment of such sum shall be in full settlement of all claims of the said David J. Dazé against the United States arising when, in order to preserve his eyesight, it was necessary for him to incur expenses for surgical treatment of a service-incurred disability which could not be provided by the Veterans' Administration. No part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000."

The records indicate that the veteran entered active duty in the service of the Army of the United States on May 17, 1943, and was retired on August 30, 1945, for disability incurred in line of duty in combat with an enemy of the United States. He was awarded officer's retirement pay by the Army, effective September 1, 1945. The disability on which disability retirement pay was based was described as—

"(1) Wound, penetrating, right eye, severe, with intraocular hemorrhage, traumatic choroiditis, and loss of useful vision, all sustained when he was wounded in action on January 23, 1945, near Colmar, France. (2) Foreign body, retained, left eye, secondary to injury incurred as in No. 1 with choroiditis, traumatic. The disability on which Lieutenant Dazé's retirement is based was incurred in combat with an enemy of the United States and was the result of an explosion of instrumentality of war in line of duty."

It was determined by the Veterans' Administration on October 29, 1945, that under laws administered by the Veterans' Administration, the veteran's disability was service-connected incurred in service in World War II.

By letter dated September 16, 1946, the veteran informed the Veterans' Administration that in connection with a planned operation to remove the foreign object from his left eye, he proposed to obtain medical, surgical, and hospital services from private sources with the expectation that the Veterans' Administration would pay the cost of such services. Upon receipt of this letter, the chief medical officer, Veterans' Administration Regional Office, Los Angeles, Calif., on September 19, 1946, communicated with the veteran by telephone informing him that Veterans' Administration facilities were available for an eye operation, that he could report to the Veterans' Administration at any time for hospitalization, but that payment by the Veterans' Administration of expenses of surgical and hospital services obtained from private sources could not be authorized. The veteran indicated that he was satisfied with this information and that he would discuss the matter with his family and make a decision as to what he was to do.

By letter dated September 21, 1946, the veteran acknowledged that he had been informed that Veterans' Administration facilities were available for the operation and that the Veterans' Administration could not defray the cost of private surgical and hospital services procured by him. Nevertheless, he advised that he preferred private care. He concluded that he would, therefore, proceed to secure the services of private surgeons, or physicians, and expressed the view that the cost of such services should be paid by the Veterans' Administration.

On September 23, 1946, the veteran personally called at the outpatient department, Veterans' Administration Hospital, Los Angeles, Calif., and was referred to the eye, ear, nose, and throat clinic at that hospital where, after an examination, hospitalization was recommended. The veteran was again informed that since Veterans' Administration facilities were available, payment by the Veterans' Administration of the expenses of private hospitalization could not be authorized. The veteran again declined Veterans' Administration hospitalization, stating that he would not be satisfied to have anyone operate upon him but the private oculist then caring for him, and that he was going to secure the services of his private physician, the expenses of which he expected the Veterans' Administration to pay. He was then advised that, if at any time he changed his mind, he could return to the Veterans' Administration hospital where he would be afforded necessary hospitalization and medical care. Since that time, no further communication on the subject has been received from the veteran. However, there is information of record that on September 25, 1946, an operation for removal of a foreign body from the left eye of the veteran was performed by a certain private physician. It is assumed, therefore, that the amount proposed to be paid under the bill represents expenses incurred by the veteran as a result of that operation.

All eligible veterans suffering from service-connected disabilities have a right to be afforded necessary medical care and treatment by the Veterans' Administration including outpatient treatment, and if beds are not available in Veterans' Administration hospitals or other Federal hospitals which have agreed to accept veterans, arrangements may be made to place them in suitable State, county, municipal, or private hospitals at Governmental expense. Supplementing this broad medical program is authority for payment or reimbursement of medical expenses for medical treatment, including the necessary traveling incidental thereto, obtained without prior authorization from the Veterans' Administration, under the following conditions set forth in a Veterans' Administration regulation:

(1) The claim must be for the treatment of a disease or injury shown to be service-connected by a decision of a Veterans' Administration adjudicating agency, or for the adjunct relief of an associated non-service-connected condition determined by designated Veterans' Administration medical officers as aggravating a service-connected disability.

(2) The treatment must have been rendered in a medical emergency.

(3) Government facilities must have been not feasibly available.

(4) Delay would have been hazardous.

All of these elements must have existed, and if any was lacking, reimbursement cannot be authorized. Other Veterans' Administration regulations provide shat as to claims filed on or after July 25, 1950, payment or reimbursement of expenses for unauthorized medical services may be authorized for a period of not more than 2 years prior to the date of receipt of claim therefor, and further, that no reimbursement for payment of unauthorized medical treatment will be made when procured by a claimant through private sources in preference to available Government facilities.

By letter dated July 18, 1951, addressed to Hon. Gordon L. McDonough, Member of Congress, who had expressed interest on behalf of the veteran, information was furnished concerning the conditions under which payment or reimbursement of unauthorized medical expenses may be made by the Veterans' Administration. He was further advised that in view of the fact that more than 2 years had elapsed since the mentioned operation, a claim could not be entertained at that time. However, aside from the question of failure to file timely application, it is evident that had such application been made, the Veterans' Administration could not have approved it under the governing rules discussed in the preceding paragraph of this report, since Veterans' Administration facilities for the treatment of the veterans' service-connected eye condition were feasibly available but were declined by the veteran in preference to treatment secured from private sources. In this connection, it is clear that the expense of private medical or surgical services in this case was not, as stated in the bill, incurred by the veteran because such services could not be furnished by the Veterans' Administration, but rather were incurred solely as the result of the veteran's own independent decision, made with full knowledge as to the availability of the Veterans' Administration medical, surgical, and hospital facilities.

Regarding the sum proposed to be paid by the bill, $1,000, it is deemed pertinent to state that had the requirements for entitlement to reimbursement of, or payment for, unauthorized medical expenses been met in this case, which they were not, payment would have been made in accordance with prescribed standards relating to fees. Since there is no basis under existing regulations for payment of the amount in question, the Veterans' Administration has not undertaken to determine whether such amount would have been payable under the prescribed standards.

The enactment of H. R. 5461 would be discriminatory in that it would remove the case of Mr. Dazé from the provision under which payment of reimbursement of cost of unauthorized medical expenses has been or would be denied in cases similarly circumstanced. It would constitute a precedent for similar proposals in behalf of other claimants. Furthermore, it appears that the adoption of the principle of this bill might, in effect, be an incentive to veterans to engage the services of private physicians and hospitals, with the Government ultimately paying the costs thereof, and to disregard medical care and treatment which the Government affords through the Veterans' Administration, the quality of which ranks with the best and most modern available.

The Veterans' Administration does not believe that private bills of this nature should receive favorable consideration.

Advice has been received from the Bureau of the Budget that there would be no objection to the submission of this report to your committee.

Sincerely yours,

C. W. CLARK
(For Carl R. Gray, Jr., Administrator).

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Calendar No. 1868

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1845

JOSEPH H. WASHBURN

APRIL 24, 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 3638]

The Committee on the Judiciary, to which was referred the bill (H. R. 3638) for the relief of Joseph H. Washburn, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

AMENDMENT

On page 1, line 6, strike the figure "$2,500" and insert in lieu thereof the figure "$1,182.21".

PURPOSE

The purpose of the proposed legislation, as amended, is to authorize and direct the Secretary of the Treasury to pay to Joseph H. Washburn, of Long Beach, Calif., the sum of $1,182.21, in full settlement of all his claims against the United States arising out of his erroneous recall to extended active duty in the United States Marine Corps on July 29, 1950, after he had been discharged therefrom.

STATEMENT

The records of the Department of the Navy disclose that the claimant enlisted in the Marine Corps Reserve on September 1, 1949, to serve for a period of 4 years. On or about June 27, 1950, the claimant requested that he be discharged from the Marine Corps Reserve. Administrative action to effect the claimant's discharge was subsequently initiated and the claimant's service record indicates that such discharge became effective on July 6, 1950.

On July 19, 1950, a Marine Corps directive suspended the authority under which Marine Corps Reserve personnel could be discharged at

their own request. On July 29, 1950, the claimant was ordered to extended active duty and served until relieved from active duty on February 11, 1951. During that period he participated in the assault and seizure of Inchon, the capture and securing of Seoul, and in the Wonsan-Hungnam campaign in North Korea.

The claimant was discharged from the Marine Corps Reserve on February 11, 1951. He was issued a report of separation (DD form 214) which notes his period of active duty from July 29, 1950, and which authenticates his participation in the Korean campaign.

Information in the file discloses that the claimant was recalled to active duty on July 29, 1950, despite his protest to responsible Marine Corps personnel that he had already been discharged from the service. On August 1, 1950, he reported to his unit at Camp Pendleton, Calif., where he remained for 18 days, and then was shipped to Korea. He remained in Korea from September 6, 1950, until January 26, 1951. He arrived in the United States on February 11, 1951.

The Department of the Navy, in reporting on a bill for the relief of this claimant in the 83d Congress, stated that whether Washburn should receive additional compensation, in the nature of damages for hardships and privations which he and his dependents may have suffered during his period of active Marine Corps service, would appear to be a question more properly for determination by the Congress than by that Department and, therefore, the Navy Department prefers to make no recommendation with regard to legislation for the relief of this claimant.

The Bureau of the Budget, in reporting on a bill for the relief of this claimant in the 83d Congress, advised that it believes that if the facts clearly establish that the claimant was wrongfully called to active service, then he should be entitled to compensation representing the difference between what he could reasonably have been expected to earn in civilian employment during the period he was in the service and the amount of his military pay and allowances during that same period.

The committee notes that the Navy Department's report admits administrative action to effect this claimant's discharge from the Marine Corps was initiated and that his service record contains entries indicating that he was discharged on July 6, 1950. In view of this, the committee is of the opinion that this claimant should be compensated, in some degree, for the damages suffered and which arose out of his erroneous recal to extended active duty, and that he should be entitled to compensation representing the difference between what he could reasonably have been expected to earn in civilian employment during that period he was in the service and the amount of his military pay and allowances during that same period. The Navy Department records disclose that for the period of service from July 29, 1950, to February 11, 1951, the claimant received $857.79, and that he also received $300 in mustering-out pay. In an affidavit on file with the committee, the claimant states that at the time he received orders to extended active duty he was receiving earnings in the sum of $90 per week. The committee finds that the difference between what he actually would have received had he continued with his civilian employment and the sum that he actually received in military pay and allowances and mustering-out pay amounts to $1,182.21. Accordingly, the committee recommends compensation in this amount.

The committee has allowed the conventional 10 percent attorney's fee in this bill after receiving a letter from the sponsor of the legislation recommending allowance of the fee and stating that actual services have been rendered on behalf of the claimant by the attorney involved.

The committee, therefore, recommends favorable consideration of H. R. 3638, as amended.

Attached hereto and made a part hereof is the report of the Department of the Navy, submitted in connection with similar legislation of the 83d Congress, and other evidentiary data relating to this claim.

DEPARTMENT OF THE NAVY,
OFFICE OF THE JUDGE ADVOCATE GENERAL,
Washington, D. C., May 5, 1954.

Hon. CHAUNCEY W. REED,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: Reference is made to your request for a report on H. R. 7717, for the relief of Joseph H. Washburn. The bill would authorize and direct the Secretary of the Treasury to pay the sum of $6,100 to Joseph H. Washburn of Long Beach, Calif. The payment of that sum would be in full settlement of all claims of Joseph H. Washburn against the United States arising out of his alleged erroneous recall to extended active duty in the Marine Corps. The files of this Department disclose the following pertinent facts with respect to Washburn's claim.

On September 1, 1949, at Seal Beach, Calif., Washburn enlisted in the Marine Corps Reserve to serve for a period of 4 years. He was appointed to the rank of corporal on the same date and was assigned to B Company, 13th Infantry Battalion, Organized Marine Corps Reserve, Seal Beach, Calif. On or about June 27, 1950, Washburn requested that he be discharged from the Marine Corps Reserve. Administrative action to effect Washburn's discharge was subsequently initiated. Although Washburn's service record does contain certain entries indicating discharge on July 6, 1950, some doubt is raised by a written statement of Washburn, on file in his service record, as to whether the administrative procedure of his discharge was in fact concluded by the delivery of a discharge certificate to him. On July 19, 1950, a Marine Corps directive suspended the authority under which Marine Corps Reserve personnel could be discharged at their own request. On July 29, 1950, Washburn was ordered to extended active duty and served until relieved from active duty on February 11, 1951. During that period he participated in the assault and seizure of Inchon, the capture and securing of Seoul, and in the Wonsan-Hungnam campaingn, in North Korea.

Washburn was discharged from the Marine Corps Reserve on February 11, 1951. He was issued a Report of Separation (DD Form 214) which notes his period of active duty from July 29, 1950, and which authenticates his participation in the Korean campaign. In addition, Washburn has been furnished a certificate, in lieu of lost or destroyed discharge certificate, to replace the certificate supposedly issued on July 6, 1950. As a result, Washburn is entitled to and has received all of the monetary benefits, insofar as pay and allowances are concerned, to which a member of the Marine Corps Reserve who served on active duty is entitled.

Whether Washburn should receive additional compensation, in the nature of damages for hardships and privations which he and his dependents may have suffered during his period of active Marine Corps service, would appear to be a question more properly for determination by the Congress than by this Department. The basis for arriving at the $6,100 amount, however, that would be payable under the terms of the bill, is not apparent.

In view of the foregoing, the Department of the Navy makes no recommendation with regard to enactment of H. R. 7717.

The Bureau of the Budget has advised that while it has no objection to the submission of this report to the Congress, it believes that if the facts clearly establish that the claimant was wrongfully called to active service, then he should be entitled to compensation representing the difference between what he could reasonably have been expected to earn in civilian employment during the period he was

in the service and the amount of his military pay and allowances during that same period.

In connection with the views of the Bureau of the Budget as stated above, the records of this Department indicate that the total military pay and allowances received by Washburn during the period of his service, July 29, 1950, to February 11, 1951, was $857.79. Washburn also received $300 in mustering-out pay.

Sincerely yours,

IRA H. NUNN,
Rear Admiral, USN,
Judge Advocate General of the Navy
(For the Secretary of the Navy).

BRIEF OF CASE

Re Washburn, Joseph H. (Corporal): Serial No. 1075845–0300, United States Marine Corps Reserves (Veteran of World War II. Has a wife and two children).

July 6, 1950: Discharged from Marine Corps Reserve.

July 29, 1950: Recalled to active duty in United States Marine Corps despite his protest to responsible Marine Corps personnel. Given no physical examination.

August 1, 1950: Reported to his unit at Camp Pendleton, Calif. Remained there 18 days and then was shipped to Korea.

September 6, 1950: Arrived at Pusan, Korea.

September 15, 1950: Participated in amphibious landing at Inchon.

September 27, 1950: Participated in capturing of Seoul.

October 20, 1950: Participated in landing at Wonson. Fought through to Hungnam and Hamhung and to the Chosen Reservoir where he was trapped by the Communists on November 28, 1950. Was able to fight his way back to the American lines only after suffering tremendous hardships at the hands of the North Korean and Chinese Communists in the subzero weather of North Korea. Then was sent to Mosom for a rest. While there, was informed that he did not belong in the Marine Corps and orders were issued shipping him home.

January 26, 1951: Left Korea.

February 11, 1951: Arrived home.

Washburn still has not received the discharge certificate. He has only the Orders which wrongfully called him back to active duty on July 29, 1950, and those that returned him home on February 11, 1951.

September 17, 1952: Washburn made application for mustering-out pay.

December 10, 1952: Was informed by the Commandant of the Marine Corps that he was being denied mustering-out pay because the claim for compensation was based on military service performed in a defacto status.

July 17, 1953: Attorney, retained by Washburn, wrote to Marine Corps stating that Washburn wished to recover damages for the tremendous privations and hardships he was forced to undergo as a result of the active duty in the Marine Corps from July 29, 1950, to February 11, 1951.

August 6, 1953: Colonel Earnshaw, Acting Assistant Director of Personnel, United States Marine Corps, replied to the attorney stating that "Headquarters is unable to advise you with regard to any suit you might bring against the Government on behalf of Mr. Washburn, since this would be under the cognizance of the Attorney General of the United States." Colonel Earnshaw did point out that some relief might be obtained by Washburn's applying to the Board for the Correction of Naval Records, Washington, D. C., with a view to validation of his last period of Marine Corps' service. The Colonel further stated that in the event of unfavorable action by the Board, or if more extensive relief than the benefits normally incident to military service is sought, introduction of private relief legislation in Congress might be a more suitable approach.

August 22, 1953: Washburn received a letter from the Record Service Section, Records Branch, Marine Corps, stating that it has been determined under the Comptroller General's Decision B–115287 of July 16, 1953, that he is eligible for mustering-out pay under the Veterans' Readjustment Assistance Act of 1952.

ORIGINAL ORDERS

RCB/wfs ML/P16 Ser: 1401
2 FEB 1951.

First Endorsement on CG 1st Mar Div FMF DSO 25–51 of 25 January 1951.
From: Commanding Officer, First Provisional Casual Company, FMF, c/o FPO, San Francisco, California.
To: Corporal Joseph H. Washburn, 1075845/0300, USMCR.
Subject: Orders.

1. Reported for clothing and transportation at 1130 27 January, 1951.
2. On 3 February, 1951, you will proceed as routed, via transportation to be furnished, and carry out the unexecuted portion of your basic orders.

R. C. BURNS.

ORIGINAL ORDERS

OBW/wbc P16–3
8 FEB 1951.

Second Endorsement on 1st Mar Div SO 25–51.
From: Commanding Officer, Marine Barracks, U. S. Naval Receiving Station, Seattle, Washington.
To Corporal Joseph H. Washburn, 1075845/0300, USMCR.
Subject: Orders.

1. You reported at 1900, 7 February 1951. (Returned Cont US same date.)
2. When directed by competent authority, you will proceed as routed and carry out the unexecuted portion of your basic orders.
3. The Officer in Charge, District Headquarters Recruiting Station, Seattle, Washington, will furnish the necessary transportation and subsistence.

O. B. WELLS,
(By direction.)

PS/hap
P16
9 FEB 1951.

Third Endorsement on 1st Mar Div SO 25–51.
From: Officer in Charge, DHRS, Seattle, Washington.
To: Corporal Joseph H. Washburn, 1075845/0300, USMCR.

1. You are herwith furnished the following transportation and cash on these orders: T/R NM264,595 for one (1) mixed class fare, Seattle, Wash. to Long Beach, Calif., VIA: UP-Coach-Portland; SP-Int-L. A.; PE-Coach. T/R NM264,596 for one (1) Pullman berth, Portland, Ore. to L. A., Calif. Total cash furnished you on these orders is $7.50.
2. Your itinerary will be as follows:
   Lv. Seattle, Wash., 4:45 p. m. 9 Feb. 51. Ar. Portland, Ore., 9:15 p. m. 9 Feb. 51.
   Lv. Portland, Ore., 10:10 p. m. 9 Feb. 51. Ar. Martinez, Cal., 7:33 p. m. 10 Feb. 51.
   Lv. Martinez, Cal., 10:00 p. m. 10 Feb. 51. Ar. Los Angeles, Cal., 10:45 p. m. 11 Feb. 51.
   Lv. Los Angeles, Cal., 11:20 a. m. 11 Feb. 51. Ar. Long Beach, Cal., 11:50 a. m. 11 Feb. 51.

P. SARRIS,
(By direction.)

HEADQUARTERS, UNITED STATES MARINE CORPS,
Washington, D. C., July 20, 1950.

MC–1208298.
From: Commandant of the Marine Corps.
To—
Commanding Officer, 13th Infantry Battalion, Marine Corps Reserve Training Center, 851 Chavez Ravine Road, Los Angeles, California.
Commanding Officer, Headquarters Company, 13th Infantry Battalion, Marine Corps Reserve Training Center, 851 Chavez Ravine Road, Los Angeles, California.

Commanding Officer, "A" Company, 13th Infantry Battalion, Marine Corps Reserve Training Center, 3400 Dewey Street, Santa Monica, California.
Commanding Officer, "B" Company, 13th Infantry Battalion, Marine Corps Reserve Training Center, Naval Ammunition and Net Depot, Seal Beach, California.
Commanding Officer, "C" Company, 13th Infantry Battalion, Marine Corps Reserve Training Center, 600 North Alameda Street, Compton, California.
Commanding Officer, "E" Company, 13th Infantry Battalion, Marine Corps Reserve Training Center, 1101 South Alvernon Way, Tucson, Arizona.
Commanding Officer, 3d Engineer Company, Marine Corps Reserve Training Center, 2042 West Thomas Road, Phoenix, Arizona.
Commanding Officer, 12th Amphibian Tractor Battalion, Marine Corps Reserve Training Center, Building 2, Treasure Island, San Francisco, California.
Commanding Officer, Headquarters Company, 12th Amphibian Tractor Battalion, Marine Corps Reserve Training Center, Building 2, Treasure Island, San Francisco, California.
Commanding Officer, "A" Company, 12th Amphibian Tractor Battalion, Marine Corps Reserve Training Center, Building 2, Treasure Island, San Francisco, California.
Commanding Officer, "B" Company, 12th Amphibian Tractor Battalion, Marine Corps Reserve Training Center, Naval Air Station, Moffett Field, California.
Commanding Officer, "C" Company, 12th Amphibian Tractor Battalion, Marine Corps Reserve Training Center, Building 317, Naval Supply Annex, Rough and Ready Island, Stockton, California.
Commanding Officer, 12th Signal Company, Marine Corps Reserve Training Center, 2144 Clement Avenue, Alameda, California.
Commanding Officer, 2d 155mm Howitzer Battalion, Marine Corps Reserve Training Center, Building 11, Naval Air Station, Dallas, Texas.
Commanding Officer, Headquarters Battery, 2d 155mm Howitzer Battalion, Marine Corps Reserve Training Center, Building 11, Naval Air Station, Dallas, Texas.
Commanding Officer, "B" Battery, 2d 155mm Howitzer Battalion, Marine Corps Reserve Training Center, Building 11, Naval Air Station, Dallas, Texas.
Commanding Officer, "A" Battery, 2d 155mm Howitzer Battalion, Marine Corps Reserve Training Center, 2222 Worth Street, Fort Worth, Texas.
Commanding Officer, "C" Battery, 2d 155mm Howitzer Battalion, Marine Corps Reserve Training Center, 1002 Pine Street, Texarkana, Texas.
Commanding Officer, 17th Engineer Company, Marine Corps Reserve Training Center, Swan Island, Portland, Oregon.

Subj: Orders to extended active duty.
Encl: (1) Administrative instructions.

1. On 21 July 1950, you are assigned to extended active duty at the place to which these orders are addressed, for a period in excess of thirty days.

2. Effective on 21 July 1950, and during the period 21 July 1950 to 29 July 1950, you are hereby directed to assign to extended active duty for a period in excess of thirty days, all Class II personnel, including naval reserve, but not including deferments and members of the Women's Platoon attached to and serving with your command.

3. You are directed to insure that each member of your command less deferments and the Women's Platoon is on extended active duty and ready to entrain not later than 29 July 1950.

4. You and the personnel of the units addressed, less deferments and the Women's Platoon, are assigned to extended active duty at the place to which these orders are addressed.

5. On or about 31 July 1950, you are directed to proceed with the officers and enlisted personnel under your command, less deferments and the Women's Platoon, as routed by the Quartermaster General of the Marine Corps, to the Marine Barracks, Camp Joseph H. Pendleton, Oceanside, California, and upon arrival thereat, you will report with the troops under your command to the Commanding General, Marine Barracks, for duty.

6. You are directed to furnish to each of the personnel attached to your command, less deferments and the Women's Platoon, a countersigned copy of this order, less enclosure, signed by you or your representative, which will constitute the original assignment to extended active duty orders.

7. By copy of this order the Commanding General, Marine Barracks, Camp Joseph H. Pendleton, Oceanside, California, is directed to have the necessary physical examinations conducted as soon as practicable after your arrival at Camp Pendleton, Oceanside, California, for all personnel not physically examined at the home station.

8. You will comply with the administrative instructions contained in Enclosure (1) Administrative Instructions Activation of Organized Reserve (Ground) and all modifications and addenda thereto.

9. You are hereby authorized to permit not to exceed ten per cent of the officer personnel and ten per cent of the enlisted personnel, to travel to the Marine Barracks, Camp Joseph H. Pendleton, Oceanside, California, via privately owned conveyance. Personnel traveling via privately owned conveyance will be entitled to reimbursement at the rate of three cents per mile.

10. As soon as practicable and at least three days prior to departing from the home station, you will submit a final quarterly Marine Corps Reserve Drill Report to the Disbursing Officer, carrying your account. Pay records of personnel shall be procured from the Disbursing Officer prior to departure from the home station for delivery to the Disbursing Officer, Marine Barracks, Camp Joseph H. Pendleton, Oceanside, California.

11. The travel enjoined is necessary in the public service.

12. Travel is chargeable, Military Personnel, Marine Corps, 1951, Appropriation 1711105.18, Allotment Number 10105.

C. B. CATES.

P16-3
11 FEB 1951

Fourth Endorsement on 1st MarDiv FMF SO 25-51 of 25 Jan 1951.

I arrived home at 1200 11 February 1951, my permanent mailing address 6875 Coachella Avenue, Long Beach, California.

JOSEPH H. WASHBURN,
Corporal, USMCR.

Certified a true copy.

S. W. ROBINSON,
Major, USMCR.

Countersigned: A countersigned copy of these orders constitute original orders for Corporal JOSEPH H. WASHBURN (1075845), USMCR.
G. M. RANDALL, Capt., USMCR.

[First endorsement]

26 JULY 1950.

"B" Company, 13th Infantry Battalion, USMCR, Seal Beach, California
From: Commanding Officer
To: Corporal JOSEPH H. WASHBURN (1075845), USMCR, 6875 Coachella Ave., Long Beach, Calif.

1. You are hereby assigned to extended active duty for a period in excess of thirty (30) days and will report to the Commanding Officer, "B" Company, 13th Infantry Battalion, USMCR, Seal Beach, California, not later than 0800 29 July 1950.

G. M. RANDALL.

[Second endorsement]

1. Received these orders at Seal Beach, Calif., July 29, 1950, 0800.

Cpl JOSEPH H. WASHBURN.

[Third endorsement]

"B" Company, 13th Infantry Battalion, USMCR, Seal Beach, California
From: Commanding Officer
To: ----------

1. You reported at 0800 ------ July 1950.

G. M. RANDALL.

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Calendar No. 1869

84TH CONGRESS, 2d Session } SENATE { REPORT No. 1846

MARTIN F. KENDRIGAN

APRIL 24, 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 4902]

The Committee on the Judiciary, to which was referred the bill (H. R. 4902) a bill for the relief of Martin F. Kendrigan, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

AMENDMENT

On page 2, lines 14 and 15, strike the words "in excess of 10 per centum thereof".

PURPOSE

The purpose of the proposed legislation, as amended, is to relieve Capt. Martin F. Kendrigan, Army of the United States, retired, of all liability to refund any compensation paid him for services rendered as a civilian employee of the Department of the Army at Fort Lewis, Wash., from May 24, 1951, to February 7, 1952; and to authorize the Secretary of the Treasury to pay to Captain Kendrigan any amounts refunded by him or withheld from money due him.

STATEMENT

As a retired officer Captain Kendrigan was limited by the provisions of section 212 of the Economy Act of June 30, 1932 (47 Stat. 406), as amended by the act of June 15, 1940 (54 Stat. 761; 5 U. S. C., sec. 59a), to a combination of retired pay and compensation for Federal employment of not more than $3,000. On May 24, 1951, Captain Kendrigan was employed at Fort Lewis, Wash., as a warehouseman, and was subsequently promoted to the position of supply clerk (GS–3). Captain Kendrigan was so employed under the misconception that his case fell within an exception of the law relating to dis-

ability discharges. It was subsequently determined that his disability did not come within the exception, and when he discovered this fact Captain Kendrigan promptly resigned his civilian position. He had collected his pay in the honest belief that he was entitled to receive it. The United States has received the benefit of his services as a civilian employee which services the Army report describes as being faithful and efficient. It further appears that he is now suffering from a substantial degree of disability, and repayment of his compensation would be a severe hardship for him and for his wife who is dependent upon him for her support. The amount required to be refunded is $2,304.51.

On the basis of these facts the committee concurs with the recommendation of the Department of the Army, and recommends the favorable consideration of the bill as amended.

DEPARTMENT OF THE ARMY,
Washington, D. C., October 2, 1953.

Hon. CHAUNCEY W. REED.
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. REED: Reference is made to your letter enclosing a copy of H. R. 2438, 83d Congress, a bill for the relief of Martin F. Kendrigan, and requesting a report on the merits of the bill.

This bill provides as follows:

"That (a) Capt. Martin F. Kendrigan, Army of the United States, retired, is hereby relieved of any obligation to repay amounts of overpayments made to him by the United States during the period beginning on December 15, 1948, and ending on January 4, 1949, when, as a result of a misinterpretation of section 212 of the act of June 30, 1932, he was employed as a supply clerk at Fort Lewis, Wash.

"(b) The Secretary of the Treasury is hereby authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the said Capt. Martin F. Kendrigan a sum equal to the amount of any repayments made by him to the United States on account of the overpayments described in subsection (a)."

The records of the Department of the Army show that Martin F. Kendrigan was born at Yulan, Sullivan County, N. Y., on June 12, 1901; that he enlisted as a private in the Regular Army of the United States on June 13, 1918, and served under such enlistment until August 5, 1919, when he was honorably discharged by reason of general demobilization; that he again enlisted in the Regular Army on September 9, 1920, and served under such enlistment until June 14, 1922, when he was honorably discharged; that he reenlisted on July 15, 1922, and was honorably discharged on March 17, 1924; that he again enlisted in the Regular Army on May 21, 1931, and was honorably discharged from the service on April 4, 1934; that he reenlisted on April 27, 1934, and was honorably discharged on April 26, 1937; that he reenlisted on April 28, 1937, and was honorably discharged on August 26, 1939; that he reenlisted on August 26, 1939; that on August 15, 1942, this soldier (who was then a master sergeant) was appointed a first lieutenant in the Army of the United States, and on August 18, 1942, he was ordered to report for active duty for service in that capacity effective August 23, 1942; that Master Sergeant Kendrigan was honorably discharged from the Army on August 22, 1942, so that he could enter upon active duty in the Army as a first lieutenant; and that he duly took the oath of office as a first lieutenant on August 23, 1942, and entered upon active duty as such on that date. On December 10, 1943, Lieutenant Kendrigan was promoted to the grade of captain.

This officer served in the Signal Corps at various stations and assignments in the United States until July 18, 1946, when he was sent overseas. He arrived in the European Theater of Operations on August 3, 1946, and served as a Signal Corps officer in Germany until June 4, 1947, when he was returned to the United States. He arrived back in this country on June 16, 1947. On December 2, 1947, Captain Kendrigan was promoted to the grade of major in the Army of the United States, and thereafter on the same date he was relieved from active duty in the Army in that grade. On December 15, 1947, a commission was issued, by

direction of the President, appointing Major Kendrigan a major in the Signal Corps, Officers' Reserve Corps, to date from December 2, 1947, and he duly accepted such commission.

On December 9, 1947, this former officer enlisted as a master sergeant in the Signal Corps, Regular Army of the United States for a period of 3 years. On September 30, 1948, Master Sergeant Kendrigan was retired from the service by reason of physical disability incurred in line of duty; and effective October 1, 1948, he was placed upon the retirement list as a captain (the highest temporary grade in which he served satisfactorily for not less than 6 months while on active duty in the Army) and was granted retirement pay in that grade, in the amount of $278.44 per month, in accordance with the provisions of section 203 (a) of the Army and Air Force Vitalization and Retirement Equalization Act of 1948, approved June 29, 1948 (62 Stat. 1081, 1085).

Effective May 24, 1951, Captain Kendrigan was employed at headquarters, Fort Lewis, Wash., as a warehouseman (general) at a wage of $1.34 per hour, and on December 16, 1951, he was promoted to general supply clerk (GS–3) at a salary of $3,110 per annum. He resigned from the last-named position on February 7, 1952, immediately after he learned that the collection from the United States of both his retirement pay as a captain and his salary as a civilian employee of the Government was prohibited by law.

The pertinent provision of law on this subject is section 212 of the Economy Act of June 30, 1932 (47 Stat. 406), as amended by the act of June 15, 1940 (54 Stat. 761; 5 U. S. C. 59a), which provides as follows:

"(a) After the date of the enactment of this act, no person holding a civilian office or position, appointive or elective, under the United States Government or the municipal government of the District of Columbia or under any corporation, the majority of the stock of which is owned by the United States, shall be entitled, during the period of such incumbency, to retired pay from the United States for or on account of services as a commissioned officer in any of the services mentioned in the Pay and Adjustment Act of 1922 (U. S. C., title 37), at a rate in excess of an amount which when combined with the annual rate of compensation from such civilian office or position, makes the total rate from both sources more than $3,000; and when the retired pay amounts to or exceeds the rate of $3,000 per annum such person shall be entitled to the pay of the civilian office or position or the retired pay, whichever he may elect. As used in this section, the term 'retired pay' shall be construed to include credits for all service that lawfully may enter into the computation thereof.

"(b) This section shall not apply to any person whose retired pay, plus civilian pay, amounts to less than $3,000: *Provided*, That this section shall not apply to regular or emergency commissioned officers retired for disability incurred in combat with an enemy of the United States or for disabilities resulting from an explosion of an instrumentality of war in line of duty during an enlistment or employment as provided in Veterans Regulation No. 1 (a), part I, paragraph I."

It was found that the restrictions laid down in subsection (a) of the above-quoted statute applied in the case of Captain Kendrigan inasmuch as his physical disability was neither "incurred in combat with an enemy of the United States" nor resulted from "an explosion of an instrumentality of war."

The commanding general, Fort Lewis, Wash., in a letter, dated February 26, 1952, made the following official report of the matter of Captain Kendrigan receiving dual compensation from the Government:

"1. Effective May 24, 1951, subject employee (Martin F. Kendrigan) was appointed at this station as a civilian employee. Prior to his employment he was retired as a captain from the United States Army for permanent disability in line of duty. His disability was due to duodenal ulcers.

"2. Mr. Kendrigan's application for Federal employment clearly shows his retirement status. However, due to misinterpretation of appropriate directives, it was determined that he was employable because of his having been retired for disability.

"3. Mr. Kendrigan resigned from this station immediately upon discovering that he was in a dual-pay status. Resignation was effective February 7, 1952.

"4. Inasmuch as Mr. Kendrigan has performed the services of the civilian position, and was appointed without concealment of any of the facts concerning his retirement, information is requested as to the procedure to be followed to obtain relief from the overpayment."

Subsequently, on July 14, 1953 (after the introduction of H. R. 2438, 83d Cong.), the commanding officer at Fort Lewis, Wash., in a further report of the facts and circumstances in this case, stated:

"This employee (Martin F. Kendrigan), at the time of original employment, indicated that he was a retired Army officer, but due to a misinterpretation of regulations by the personnel technician effecting the placement action, Mr. Kendrigan was employed during the period indicated above. At the time the error was discovered Mr. Kendrigan immediately submitted his resignation and lump-sum leave payment was withheld.

"In view of the circumstances surrounding this appointment this headquarters recommended relief for Mr. Kendrigan to relieve him of any financial responsibility for the administrative error which occurred in effecting the appointment."

The records of the Department of the Army in this case show that there was paid to Capt. Martin F. Kendrigan during the period from May 24, 1951, to February 7, 1952, inclusive, compensation as a civilian employee of the Army in the aggregate amount of $2,304.51, during which time he also collected from the Government his retirement pay as a captain. At the time Captain Kendrigan resigned his civilian position on February 7, 1952, he had accumulated to his credit 13.6 days of annual leave, for which he would have been entitled to be paid upon the termination of his civilian employment except for the fact that he was being compensated in two capacities by the Government in amounts aggregating over $3,000 per annum in contravention of the Economy Act of June 30, 1932, as amended, supra. Consequently, the Department of the Army was necessarily required to withhold the payment of compensation for the period of time covered by such accumulated leave.

On June 13, 1952, the Department of the Army made a formal demand upon Captain Kendrigan for the refund to the United States of the sum of $2,304.51. Up to the present time no part of such sum has been refunded to the Government.

The evidence in this case shows that Captain Kendrigan is now suffering from a substantial degree of permanent disability; and that he is married and his wife is dependent upon him for support. The aforesaid sum of $2,304.51 was paid to Captain Kendrigan for faithful and efficient service as a civilian employee of the United States, and he collected such money from the Government in the honest belief that he was entitled to receive the same. It would be a rather severe hardship to require him to refund to the United States the sum of $2,304.51, or any part thereof.

In the light of the facts and circumstances in this case it is the view of the Department of the Army that in justice and equity this claimant should be relieved of all liability to repay to the United States the amount of the pay received by him for services rendered by him as a civilian employee of the Government during the period from May 24, 1951, to February 7, 1952, inclusive, and that he should also be paid for the accrued leave which he had standing to his credit at the time of his separation from the service as a civilian employee. This Department, therefore, recommends that this bill be enacted by the Congress.

If this bill is favorably considered by your committee, it is recommended that, for the purpose of accuracy, the text of the bill be amended to read as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That (a) Captain Martin F. Kendrigan, Army of the United States, Retired, of Tacoma, Washington, is hereby relieved of all liability to refund to the United States any part of the compensation paid to him by the United States for services rendered by him as a civilian employee of the Department of the Army at Fort Lewis, Washington, during the period from May 24, 1951, to February 7, 1952, inclusive; such employment of the said Captain Martin F. Kendrigan having occurred as a result of a misinterpretation of section 212 of the Economy Act of June 30, 1932 (47 Stat. 406), as amended by the Act of June 15, 1940 (54 Stat. 761; 5 U. S. C. 59a).

"(b) That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the said Captain Martin F. Kendrigan a sum equal to the amount of any repayments made by him to the United States on account of the payment of compensation to him referred to in subsection (a), plus any pay withheld from him at the time of his separation from the service as a civilian employee of the Department of the Army on February 7, 1952, including all pay withheld covering accrued leave: *Provided*, That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000."

Similar bills have been enacted by the Congress and approved by the President (Private Law 566, 81st Cong., "for the relief of Erik H. Lindman," approved June 21, 1950, 64 Stat. A83; and Private Law 618, 81st Cong., "for the relief of Sgt. Blaine W. Hughes," approved June 29, 1950, 64 Stat. A101).

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

ROBERT T. STEVENS,
Secretary of the Army.

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Calendar No. 1870

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1847

WILLIAM H. FOLEY

APRIL 24, 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 6452]

The Committee on the Judiciary, to which was referred the bill (H. R. 6452) for the relief of William H. Foley, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

AMENDMENT

On page 2, line 3, before the word "expenses", insert "and hospital".

PURPOSE OF THE AMENDMENT

The committee has amended the bill so as to include not only medical but also hospital expenses as may be found to be reimbursable, in view of the fact that there is evidence on file indicating that the claimant incurred hospital as well as medical expenses.

PURPOSE

The purpose of the proposed legislation, as amended, is to waive sections 15 to 20, inclusive, of the Federal Employees' Compensation Act, as amended, so as to permit William H. Foley, Waterford, Conn., to file his claim for compensation for personal injuries alleged to have been sustained while in the performance of his duty as a pipefitter at the United States submarine base, New London, Conn., and have it considered on its merits.

STATEMENT

Information on file in the office of the Bureau of Employees' Compensation reveals that William H. Foley was employed as a pipefitter at the United States submarine base, New London, Conn., and received an injury to his right eye while in the performance of duty in his lawful trade on October 11, 1929. The claimant was immediately sent to the base dispensary for treatment. On October 12, 1929, the claimant returned to work and executed an injury report and submitted it to his supervisors in accordance with the Compensation Act. On several occasions between October 11, and October 20, 1929, the claimant visited the base dispensary for treatment. The injured eye did not respond to these treatments and the dispensary advised the patient to visit an eye specialist. The claimant took annual leave from October 21, to November 10, 1929. During this leave period and thereafter up to the present time the claimant has been treated by several doctors. From the date of injury on October 11, 1929, to the present, the claimant expended $3,377 on doctor bills, medication and transportation, due to his injury.

The report of the Department of Labor states that while the claimant gave a written notice of injury the day after he was injured, the form on which notice was given did not constitute a claim for compensation. A formal claim was not completed until December 1, 1931, and received on December 3, 1931, by the former Employees' Compensation Commission. At the time the injury occurred, the statutory time limitation for filing compensation claims was 1 year. Because the claim was not timely filed, the former Commission rejected it.

Information before the committee reveals that Mr. Foley has lost the complete sight of the injured right eye and has been informed that the eye must be removed, as it is affecting the sight of his left eye. The committee notes that this claimant was denied the opportunity to have his case tried on its merits because the claim was not filed within 1 year. The Secretary of Labor, in reporting on the instant bill, points this up by stating that the facts regarding the nature and extent of the injury and the resultant disability were never developed, so that the record permits of no opinion as to the merits.

While there is no information before the committee as to why the claimant waited for this time before seeking to get his claim examined on the merits, the committee is of the opinion that he should not be denied the right to have the Bureau of Employees' Compensation examine his claim on its merits. The Congress has on a number of occasions favorably considered bills of a similar nature. Attention is invited to Private Laws 143 and 350 of the 82d Congress, and Private Law 868 of the 83d Congress. Accordingly, the committee recommends favorable consideration of H. R. 6452, as amended.

Attached hereto and made a part hereof is the report submitted by the Department of Labor and certain evidentiary data relating to the claim.

DEPARTMENT OF LABOR,
OFFICE OF THE SECRETARY,
Washington, July 6, 1955.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR CONGRESSMAN CELLER: This is in further response to your request for my comments on H. R. 6452, a bill for the relief of William H. Foley.

The proposed measure would waive the time limitations of the Federal Employees' Compensation Act, to permit William H. Foley to file a claim for disability resulting from an injury to his eye. The bill is so worded that it presupposes that the claimant's disability was in fact contracted while in the performance of duty, an essential to recovery under the Federal law, and it also lacks the usual bar to the recovery of retroactive benefits.

The records of the Bureau of Employees' Compensation of this Department show that the claimant gave a written notice of injury on October 12, 1929, certifying that the previous day he had been injured in the performance of his duty. However, the form on which notice was given did not constitute a claim for compensation. A formal claim was not completed until December 1, 1931, and received on December 3, 1931, by the former Employees' Compensation Commission. At the time the injury occurred, the statutory time limitation for filing compensation claims was 1 year. Because the claim was not timely filed, the former Commission rejected it. The facts regarding the nature and extent of the injury and the resultant disability were never developed, so that the record permits of no opinion as to the merits.

The purpose of the Federal Employees' Compensation Act is to provide an orderly and equitable system for the adjudication of claims of Federal employees and their dependents for disability and death incurred while in the performance of duty. I do not favor preferential treatment of one claimant over others similarly situated. However, in the event of a congressional finding of special extenuating circumstances in this case, I would have no objection to a waiver of the statutory time limitations.

Even should such circumstances be found, I recommend that the bill be revised to correct the defects mentioned in the second paragraph of this letter. Proposed language to that end, as a substitute for H. R. 6452, is enclosed.

The Bureau of the Budget advises that it has no objection to the submission of this report.

Sincerely yours,

JAMES P. MITCHELL,
Secretary of Labor.

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES,
Washington, D. C., May 16, 1955.

Hon. HORACE SEELEY-BROWN, Jr.,
House Office Building, Washington, D. C.

DEAR CONGRESSMAN: On Wednesday, April 27, 1955, I discussed with you a rejected compensation claim of William H. Foley, Bishop Street, Mago Point, Waterford, Conn. It was agreed that a relief bill was the only solution to Mr. Foley's claim and if I would furnish your office with factual information, you would be happy to introduce the bill.

The information which follows is recorded in the file of William H. Foley, No. 324064 in the Office of the Director, Bureau of Employees' Compensation, Washington, D. C.

William H. Foley, employed as a pipefitter at the United States submarine base, New London, Conn., received an injury to his right eye while in the performance of duty in his lawful trade on October 11, 1929. The claimant was immediately sent to the base dispensary for treatment. On October 12, 1929, the claimant returned to work and executed Form CA–1, an injury report, and submitted it to his supervisor in accordance with the Compensation Act. On several occasions between October 11, 1929, and October 20, the claimant visited the base dispensary for treatment. The injured eye did not respond to these treatments and the dispensary advised the patient to visit an eye specialist. Claimant took annual leave from October 21, 1929, to November 10, 1929. During this leave period and thereafter up to the present time, the claimant was treated by Drs. Ganey, Cheney, La Pierre, Taylor, and Smith. From the date

of injury, October 11, 1929, to the present, the claimant expended $3,377 on doctor bills, medication, and transportation, due to his injury.

Operating officials of the submarine base did not forward the CA–1 form until December 11, 1931, at which time Mr. Foley applied for compensation. The BEC requested the submarine base to execute the proper forms.

For your information, I am quoting a letter of December 22, 1931, from the commander, submarine base, New London, Conn., signed by Wilson Brown, in reply to a letter from the Bureau of Employees' Compensation, dated December 10, 1931, signed by W. R. Carpenter, Chief Examiner. The letter reads as follows:

"DEAR SIR: There is forwarded herewith the original notice of injury filed by William H. Foley on October 12, 1929. Immediately upon being notified of the injury, the public works officer issued Form CA–16 for treatment with Dr. Ganey and Foley was sent to him.

"Dr. Ganey did not submit an invoice for the services rendered, either to this station or to Mr. Foley, and as Mr. Foley preferred to use his annual leave rather than go on compensation, form CA–2 was not submitted as no expenditures were incurred against the Commission.

"There is also enclosed herewith a copy of the letter written to Dr. Ganey on December 14, 1931, requesting information desired by the Commission. No reply has been received to this letter to date. As soon as a reply is received, it will be forwarded to the Commission.

"As requested there is submitted a statement from Mr. Foley, stating the condition of his eye and the medical attention he has received and the expenses incurred.

WILSON BROWN."

On January 21, 1932, William H. Foley's claim was disallowed on the basis of section 20 of the Compensation Act of September 7, 1916, wherein it states that all original claims for compensation must be filed within 1 year or all rights are barred under the act.

The submarine base, after being notified that Mr. Foley's claim was denied, February 5, 1932, sent Mr. Foley to Dr. G. P. Cheney, 179 Montauk Avenue, New London, Conn., for treatment and examination. On February 10, 1932, the Bureau of Employees Compensation was notified by Dr. Cheney as follows:

"Request your authority in the above case of William Foley to hospitalize this man. He has an eye condition which requires an iridectomy and prefer to have you designate the hospital.

Yours truly,

GEORGE P. CHENEY, M. D."

Dr. Edward C. Ernst, M. D., medical director of the BEC replied to the above letter of Dr. Cheney, that the BEC could not extend the benefits of the Compensation Act to Mr. Foley.

On October 6, 1952, Capt. W. B. Sieglaff, the commanding officer of the submarine base wrote a letter to the BEC stating it was an administrative error on their part that Mr. Foley was forbidden to collect compensation.

COMMENTS

It can be seen from the foregoing, that there is no doubt in the minds of the officials of BEC, as well as the officials at the submarine base, that Mr. Foley was injured in the line of duty and would be entitled to compensation, but for a small technicality of the law.

On September 22, 1954, I represented Mr. Foley before the Compensation Appeals Board. Attached hereto is a copy of the Employees' Compensation Appeals Board decision.

At the time I represented the claimant before the Board, I was informed by the Chairman that we could not discuss the merits of the case, since a CA–4 form was not filed for compensation by claimant within 12 months of the date of injury. I pointed out to no avail, that the reason the claimant had not filed for compensation was due to the fact that he chose to take annual leave for treatment as required. This being the case, the claimant had no reason to file claim as he had not suffered loss nor was he entitled to compensation.

The case was decided on the fact that the CA–1 form, which Mr. Foley executed at the time of injury, had printed in red at its bottom the following statement:

"Before compensation can be paid, written claim on Commission's Form CA–4, with doctor's certificate showing disability for work, must be submitted."

The Compensation Act of September 7, 1916, states that this CA–4 form must be submitted within 1 year of inury or claim is barred.

Mr. Foley has lost the complete sight of the injured right eye and has been informed that the eye must be removed as it is affecting the sight of his left eye. In view of this fact, I feel that the Government is responsible for Mr. Foley's blindness. Had not the Bureau of Employees' Compensation quibbled over some small technicality of the law and had they given him the proper medical treatment, he would have good vision today.

The present Compensation Act, as amended, pays the amount equal to 140 weeks' salary for the loss of an eye, plus all medical expenses. Since Mr. Foley earns $110.40 per week and has spent $3,377 due to the injury, the Government is indebted to Mr. Foley in the sum of $18,833.

Mr. Foley is still employed at the submarine base, working as a supervisor of the pipe shop. He has given many years of faithful service to his Government, and I trust that you and your colleagues will see fit to grant him a just bill of relief.

Respectfully yours,

HOMER V. PRATER,
Legislative Representative.

UNITED STATES DEPARTMENT OF LABOR, EMPLOYEES' COMPENSATION APPEALS BOARD

In the Matter of William H. Foley and Navy Department, Submarine Base, New London, Conn.

(Docket No. 54–113; hearing September 22, 1954; decided December 21, 1954)

Appearances: Mr. Homer V. Prater, American Federation of Government Employees, for appellant; Mr. William H. Foley, appellant; Philip J. Lesser, Esq., and Eleanor R. Kerber, attorney, for the Director, Bureau of Employees' Compensation.

DECISION AND ORDER

Before John E. Lawyer, Grace McGerr, Willard H. Shaffer.

The sole question presented in this case is whether appellant's application for review of a decision of the former United States Employees' Compensation Commission, bearing date of January 21, 1932, is sufficient on its face to invoke a review of his case on its merits as provided by section 37 of the Federal Employees' Compensation Act.

Appellant, while employed as a helper by the Navy Department at the United States submarine base, New London, Conn., on October 11, 1929, sustained a serious injury to his right eye requiring immediate and repeated medical attention at considerable cost to himself, in addition to loss of several weeks from work. On October 12, 1929, he filed a formal notice of injury which was conspicuously labeled as not being a claim for compensation. No paper which could be reasonably construed as a claim was filed until December 1931, more than 2 years after the date of injury. This claim was rejected for the reason that it was not filed within the 1-year period allowed under section 20 of the act. On September 24, 1952, appellant requested that the Bureau review and modify the decision of the former Commission, contending, as he does now on appeal, that his claim was rejected through no fault of his own but rather because of the failure of his superior to notify the Commission until more than a year had elapsed. He has offered no evidence to indicate that he did in fact file a claim within the 1-year allowed and he has not so alleged.

There may be merit to appellant's claim for compensation and also his contentions regarding the failure of his superiors to carry out their obligations. However, it is apparent that appellant did not comply with the requirements of the act. While section 20 of the act now provides that the Director may, under certain conditions, waive the 1-year limitation, the waiver provision was not enacted until July 28, 1945,[1] and was made retroactive only to injuries which occurred on or after December 7, 1940. Since the injury in this case occurred prior to December 7, 1940, when the 1-year limitation upon filing claim was an absolute limitation, it was barred by the mandatory provisions of the statute.[2]

[1] 5 U. S. C. 770.
[2] *In the Matter of Kathryn A. O'Donnell*, docket No. 53-334.

Inasmuch as appellant has presented nothing that could possibly justify a modification of the order rejecting his claim, this Board finds that the decision of the Director is amply supported by the evidence of record and must accordingly be affirmed.

ORDER

Upon the findings of the Board and the entire case record filed by the Bureau of Employees' Compensation in accordance with section 501.3 (a), and pursuant to section 501.4 of the Regulations Governing Appeals (20 CFR, pts. 501, 502), the Employees' Compensation Appeals Board hereby orders that:

The Compensation Order issued by the Director, Bureau of Employees' Compensation, dated May 29, 1953, be and it hereby is affirmed.

It is further ordered that the case record be returned to the Bureau.

JOHN E. LAWYER, *Chairman.*
GRACE MCGERR, *Member.*
WILLARD H. SHAFFER, *Member.*

Dated, Washington, D. C., December 21, 1954.

○

Calendar No. 1871

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1848

MARY VIOLA JONES

APRIL 24, 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 7583]

The Committee on the Judiciary, to which was referred the bill (H. R. 7593) for the relief of Mary Viola Jones, having considered the same, reports favorably thereon, with an amendment, and recommends that the bill, as amended, do pass.

AMENDMENT

On page 2, lines 4 and 5, strike the words "in excess of 10 per centum thereof".

PURPOSE OF AMENDMENT

The purpose of the proposed amendment is to eliminate the payment of attorney's fees in connection with the award provided in this bill.

PURPOSE

The purpose of the proposed legislation, as amended, is to pay the sum of $2,000 to Mary Viola Jones, of Atlantic City, N. J., in settlement of her claims against the United States arising out of the lapse of an insurance policy on the life of her son, Sgt. Donald Jones, which policy lapsed prior to the death of said Sergeant Jones as the result of an administrative error of personnel of the Department of the Army.

STATEMENT

Donald Jones enlisted in the Regular Army on February 27, 1948. In July 1950 he held the rank of private, first class, and was assigned to Fort Lewis, Wash. At the time he had in effect several voluntary

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allotments from his monthly pay including one which was for the purpose of paying premiums on an insurance policy on his life with the International Fidelity Insurance Co. of Houston, Tex.

On July 29, 1950, Private First Class Jones absented himself without leave from his outfit which was in the process of preparing for shipment to the Far East and on July 31, 1950, administrative action was taken by his organization to remove Private First Class Jones from the rolls as a deserter and the voluntary allotments were discontinued from his pay. This action was in violation of regulations in effect at that time providing that personnel in an a. w. o. l. status would be dropped as deserters on the date of an organization's embarkation for overseas shipment and that voluntary allotments for such absentees would not be discontinued until they had been absent for 10 days. Private First Class Jones returned to his outfit on August 3, 1950, sailed with his organization and arrived in Pusan, Korea, on August 16, 1950. He was later promoted to corporal. On February 12, 1951, he and 46 other men from his battery were reported missing in action while their unit was trying to penetrate an enemy roadblock to reach the safety of lines of the United Nations Forces. It was subsequently learned that Corporal Jones had been captured by North Korean forces. On August 14, 1954, upon receipt of information that Corporal Jones had died while a prisoner of war in Korea, a death report was issued by the Department of the Army. This report was subsequently amended on August 12, 1954, to reflect the correct date of Corporal Jones' death on April 28, 1951. In accordance with the Department of the Army policy, Corporal Jones was promoted to the grade of sergeant posthumously.

As the result of the precipitous administrative action taken by his organization in violation of Army regulations, the several allotments of Corporal Jones were discontinued. When the administrative error was discovered, action was taken to reinstate the insurance policies which decedent had taken on his life. However, one of the insurance companies refused to reinstate the policy and as a result, the decedent's mother, who was the beneficiary of that policy, has been denied the face value of the policy because of an administrative error on the part of the Army. This legislation would award the claimant the sum of $2,000 which she has agreed to accept in full satisfaction of her claim.

This legislation was introduced at the request of the Department of the Army. The Department in its letter recommending this legislation has succinctly set forth the reasons why this legislation should be approved. The Department, in its letter observes:

> The original lapse of the policy occurred not through any act on the part of Mrs. Jones or her son but because of a premature and erroneous administrative action by representatives of the Department of the Army. When Sergeant Jones received notice that such action had taken place, he was in combat in Korea. Before he had any opportunity to take steps to reinstate the policy, he was captured by the enemy and died while a prisoner of war. Under these circumstances, it appears entirely inequitable that his mother, to whose support he had been contributing and for whose protection he had obtained the policy, should be denied its benefits.

In addition, the Department makes reference to other cases in which the Congress has considered favorably private relief legislation where insurance benefits have been denied because of acts or omissions of agents of the United States. One such case was Private Law 206 of the 78th Congress, and another is Private Law 115 of the 84th Congress.

In view of the foregoing precedents and the admitted error involving personnel of the Department of the Army resulting in a loss to the claimant in excess of the amount stated in this claim, the committee recommends favorable consideration of this legislation, as amended.

Attached hereto is the letter submitted by the Secretary of the Army to the Speaker of the House of Representatives requesting introduction of this legislation.

DEPARTMENT OF THE ARMY,
Washington, D. C., July 19, 1955.

Hon. SAM RAYBURN,
Speaker of the House of Representatives.

DEAR MR. SPEAKER: There is enclosed herewith a draft of a bill for the relief of May Viola Jones. The submission of this proposed legislation is in accordance with the procedures approved by the Secretary of Defense.

The purpose of this proposed bill is to pay to Mrs. Jones the amount which she would have received as beneficiary of an insurance policy on the life of her son, Sgt. Donald Jones, who died while a prisoner of war in Korea, if the policy had not lapsed prior to his death. The policy lapsed when the Government erroneously discontinued an allotment which Sergeant Jones had established for the payment of premiums.

Records of the Department of the Army show that Donald Jones was born at Philadelphia, Pa., on January 11, 1929. His mother is Mary Viola Jones, now residing at 909 Kenner Avenue, Atlantic City, N. J. Donald Jones enlisted in the Regular Army on February 27, 1948, and was assigned service No. RA13266376. In July 1950, he held the rank of private first class, and was assigned to Battery A, 503d Field Artillery Battalion, Fort Lewis, Wash. He then had in effect the following voluntary allotments from his monthly pay for the purposes indicated:

Premiums on national service life insurance	$6.50
Premiums on insurance policy with the International Fidelity Insurance Co., Houston, Tex.	8.42
Premiums on insurance policy with American Investors Life Insurance Co., Dallas, Tex.	6.52
Support of his mother, Mrs. Mary Viola Jones	65.00

On July 29, 1950, he absented himself without leave from his organization at Fort Lewis, Wash. The organization was then in the process of preparing for shipment to the Far East and on July 31, 1950, administrative action was taken by his organization to drop Private, First Class, Jones as a deserter and to discontinue the voluntary allotments from his pay. Private, First Class, Jones remained in an absent-without-leave status through August 2, 1950, but returned to duty before his organization left the United States on August 3, 1950. He sailed with his organization and arrived in Pusan, Korea, on August 16, 1950. On December 15, 1950, he was promoted to corporal. On February 12, 1951, he and 46 other men in his battery were reported

missing in action while their unit was trying to penetrate an enemy roadblock approximately 10 miles north of Haeng Song, South Korea, to reach the safety of lines of United Nations Forces. It was learned that he had been captured by North Korean forces. On August 14, 1953, upon receipt of information that he had died during the month of April 1951, while a prisoner of war in Korea, a report of death was issued by the Department of the Army, indicating, in the absence of evidence to the contrary, that his death had occurred on April 30, 1951. Subsequent information obtained from returned prisoners of war established that he had died on April 28, 1951, as a result of pneumonia, while a prisoner of war in North Korea, and a corrected report of death was issued on August 12, 1954. In accordance with Department of the Army policy, he was promoted to the grade of sergeant posthumously.

Sergeant Jones received no pay after the month of July 1950, and therefore had no way of knowing that his allotments had been discontinued through administrative action. However, it appears that, following nonreceipt of the allotment for her support, Mrs. Jones wrote to him concerning the matter. She received an undated reply which, in pertinent part, is as follows:

> DEAR MOM: I guess you'll be pretty surprised to get this letter. We've been moving so much that this is the first time I've had really to write. In the first place, I didn't cut the allotment off. The Government did. In the second place, I haven't been paid either. I'm sorry about what happened, but can't do anything about it till I get back in the States. I was told that all my records are in the United States. When I do get paid, I will have quite a bit of cash. * * *.
>
> I close with love.
>
> DONALD.

In December 1950, the Department of the Army was notified by the Veterans' Administration that Sergeant Jones' insurance allotment had been discontinued. Investigation determined that, as stated above, he had been dropped from the rolls as a deserter and his volunteer allotments had been discontinued by his organization only 2 days after the initiation of his absence. Information as to any reason for discontinuance of his allotment on July 31, 1950, was requested from the 503d Field Artillery Battalion on December 11, 1950, which, on April 18, 1951, advised that all its retained files pertaining to matters of this type were lost on or about December 2, 1950, due to enemy action. Regulations in effect at that time provided that personnel in and absent without leave status would be dropped as deserters on the date of an organization's embarkation for overseas shipment (par. 6*d*, SR 600–120–1 dated October 21, 1949) and that voluntary allotments of such absentees would not be discontinued until they had been absent for 10 days (par. 4*b*, idem). As Sergeant Jones sailed with his unit after an absence of only 5 days, it is evident that the action of his organization in administratively dropping him as a deserter and discontinuing his voluntary allotments was erroneous.

The allotment to the Veterans' Administration for national service life insurance was reinstated retroactively as was the allotment for the support of Mrs. Jones. Steps were taken to reinstate the life-insur-

ance policies with the two private companies through the payment of all back premiums. This was agreeable to the American Investors Life Insurance Co., Dallas, Tex., and the policy with that company was reinstated. However, the International Fidelity Insurance Co. advised that it would not be agreeable to such a course of action until Sergeant Jones could be contacted to determine that the discontinuance was without his consent. Following the notification of Sergeant Jones' death, the company again advised that it was unable to reinstate the policy.

The International Fidelity Insurance Co., Houston, Tex., issued the policy in question. No. 4901, in the face amount of $2,000 to Donald Jones under the date of August 1, 1948. Mary V. Jones, mother of Donald Jones, was named as beneficiary of the policy and was to receive the face amount, $2,000, together with the reserve on all guaranteed coupons left with the company immediately upon receipt of due proof of death of Donald Jones. The policy also contained, among others, the following provisions and conditions:

> 2. Grace: A grace period of 1 month, without interest, will be allowed for the payment of every premium or installment thereof, after the first, during which time this policy will remain in full force and effect, but in the event of the death of the insured during such period of grace any overdue premium, or installment thereof will be deducted in any settlement hereunder.
>
> Except as otherwise provided herein, if any premium on this policy is not paid when due, this policy becomes ipso facto null and void and all premiums paid hereon will be forfeited to the company, and the payment of the premium or installment thereof shall not maintain this policy in force beyond the date when the next payment becomes due except as hereinafter provided.
>
> 3. Reinstatement: At any time within 3 years after default in any premium payment, and if the value of this policy has been applied to purchase other insurance in accordance with the terms of this policy and if such insurance shall be in force, and this policy shall not have been surrendered to the company and canceled, the policy may be reinstated upon evidence of insurability of the insured satisfactory to the company and the payment of all past due premiums, and the payment or reinstatement of any indebtedness to the company upon the policy, with interest at the rate of 5 percent per annum, compounded annually on such past due premiums and indebtedness.

In view of the above-quoted provisions, the policy could not have been reinstated unless the insurer was willing to waive its express provisions. As the company was unwilling to do this, Mrs. Jones has been denied the benefits thereunder, which her son, Sgt. Donald Jones, attempted to provide for her, because of an administrative error on the part of representatives of the United States.

Mrs. Jones has agreed to accept the amount of $2,000 in full settlement and final satisfaction of her claim against the United States arising out of the lapse of this insurance policy. However, the claim may not be considered under the act of July 3, 1943, as amended (31 U. S. C.

223b), because the proceeds of an insurance policy, which lapsed through nonpayment of premiums resulting from dropping the insured from the rolls and the consequent cancellation of his allotment for such premiums, do not constitute "property." The claim may not be considered administratively under the terms of the Federal Tort Claims Act, as amended (28 U. S. C. 2671) as the amount involved exceeds $1,000. The 2-year period during which suit may be instituted under that act commences on the date of the act or omission out of which the cause of action arises, not from the date that an individual is first made aware of it. As any cause of action in the present case arose on July 31, 1950, when the administrative action took place, or at the latest, on April 28, 1951, when Sergeant Jones' death occurred, the period had already expired when the first official notification of his death was made on August 14, 1953. There is no other statute under which the matter may be considered administratively and no way in which Mrs. Jones may be compensated other than through the enactment of private relief legislation.

The original lapse of the policy occurred not through any act on the part of Mrs. Jones or her son but because of a premature and erroneous administrative action by representatives of the Department of the Army. When Sergeant Jones received notice that such action had taken place, he was in combat in Korea. Before he had any opportunity to take steps to reinstate the policy, he was captured by the enemy and died while a prisoner of war. Under these circumstances, it appears entirely inequitable that his mother, to whose support he had been contributing and for whose protection he had obtained the policy, should be denied its benefits.

The Congress has, on occasion, favorably considered private relief legislation where insurance benefits have been denied because of acts or omissions of agents of the United States. One such case, known to this Department, was Private Law 206, 78th Congress (H. R. 2318, 78th Cong.). Another such bill, H. R. 8281, 83d Congress, for the relief of the estate of William B. Rice, was favorably considered by the House of Representatives on August 4, 1954, but appears to have been received by the Senate too late in the session for that body to take action. The bill was reintroduced in the 84th Congress as H. R. 2760, was passed by the House of Representatives on March 15, 1955, and since has been referred to the Committee on the Judiciary, United States Senate.

The cost of this bill, if enacted, will be $2,000.

The Bureau of the Budget advises that there is no objection to the submission of the proposed bill for the consideration of the Congress.

Sincerely yours,

ROBERT T. STEVENS,
Secretary of the Army.

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Calendar No. 1872

84TH CONGRESS, 2d Session — SENATE — REPORT No. 1849

ROY M. BUTCHER

APRIL 24, 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 2736]

The Committee on the Judiciary, to which was referred the bill (H. R. 2736) for the relief of Roy M. Butcher, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

AMENDMENTS

On page 1, line 6, strike out "$1,953.53", and insert in lieu thereof, "$1,842.95".

On page 1, line 11, strike out "in excess of 10 per centum thereof".

PURPOSE

The purpose of the proposed legislation, as amended, is to pay to Roy M. Butcher, of 510 West San Fernando Street, San Jose, Calif., $1,842.95, in full settlement of all claims under Navy Department contract NOy 26278, which claims are based upon additional costs incurred under terms of said contract.

STATEMENT

The question here is whether or not the Government is responsible for the additional expense incurred by Mr. Butcher in carrying out the orders of one of its field inspectors to perform work which was not included in the original contract, on the basis of which Mr. Butcher's bid was made and accepted by the main contractor, Mr. Peter Sorensen.

The contract was entered into on June 12, 1951. After Mr. Butcher had partially completed his work, which consisted of installing conduits and other electrical equipment, a field inspector assigned to the project ordered Mr. Butcher to encase all underground rigid steel conduits in concrete, regardless of whether said conduits were for service, feeders, circuit or control wiring. This was not a requirement in the original contract, but the inspector told Mr. Butcher that he would either encase the conduits in concrete or get off the job.

Because of this threat, Mr. Butcher followed the order of the inspector and encased all conduits in concrete.

It will be noted that the order to incur this extra expense was not issued by the main contractor, Mr. Sorensen, but was a direct order from the Navy field inspector.

It will also be noted that the addendum referred to in the file, which provides that "conduit installed underground shall be encased in concrete as specified for underground ducts" was not issued until 1952, approximately 6 months or more after Mr. Butcher had entered into the contract on June 12, 1951.

It has been argued that because Mr. Butcher was not a party to the prime contract he has no rights against the Government, but should seek relief from Mr. Sorensen, the main contractor. It appears to us that this reasoning is without merit, inasmuch as the additional work and expense of encasing the conduits in concrete was not imposed upon the prime contractor by the Government, but was a direct order to Mr. Butcher to carry out the requirements issued by the field inspector as official representative of the Navy.

It therefore appears to us that the Government is directly responsible for the additional expense incurred by Mr. Butcher in carrying out its order, which was in excess of the terms of the contract originally entered into by him.

The committee has reduced the amount of the award provided in the bill as it passed the House by $110.58, which represents a 6-percent fee which the subcontractor included in the costs of the additional work.

Upon this basis, favorable consideration of the bill is recommended.

Attached hereto for the information of the Senate is an affidavit submitted by the claimant as well as the report of the Department of the Navy and other correspondence in connection with this claim.

AFFIDAVIT OF ROY M. BUTCHER

STATE OF CALIFORNIA,
County of Santa Clara, ss:

Roy M. Butcher, being first duly sworn, under oath deposes and says:

That he is an electrical contractor, duly licensed under the laws of the State of California;

That he was the electrical subcontractor on that certain contract numbered NOy-26278 for the installation of jet fuel storage facilities at the Naval Air Station at Moffett Field, Calif.;

That while he was working on said installation he was ordered by the naval base electrical inspector, who was assigned to the project, to encase all the underground rigid steel conduits in concrete, regardless of whether said conduits were for service, feeders, circuit or control wiring. That when the undersigned stated that only the service conduits should be so encased, he was told to make the encasement or get off the job by said inspector who said he was acting under orders of his superior, the chief inspector; but, that he, the inspector, personally didn't believe

that under the plans and specifications such rigid steel conduits—except services—should be encased.

That when the chief inspector was questioned, although he wasn't an electrical man, he stated that in his opinion concrete was called for on all underground steel conduits in 9YF specifications.

That the affiant appealed next to the commander in charge of construction, who was hesitant to say yes or no as he was not an electrical man; and hence who made no definite order;

That subsequently, the commander in charge of construction was changed, and the new commander, also not an electrical man, ruled that concrete should be used.

That as the result of having to so encase the rigid steel conduits in concrete, the affiant was forced to expend the sum of $1,953.53 as follows:

Materials	$885.00
Labor	690.00
Total	1,575.00
Overhead and job expenses 12½ percent	196.88
Insurance on labor 4.3 percent	29.67
Labor taxes 6 percent	41.40
Total	1,842.95
Fee 6 percent	110.58
Total addition	1,953.53

This additional sum does not include the encasement of service conduits.

That the affiant filed his claim for such additional sums on May 28, 1952, with Peter Sorensen, the general contractor, for the installation of the jet fueling system;

That on June 10, 1952, he received an adverse decision from H. F. Thrapp, commander (CEC) United States Navy, resident officer in charge of construction, through his general contractor Peter Sorensen, said adverse decision not being based on original point of claim;

That on June 12, 1952, affiant again filed claim, citing additional reasons why the original specifications did not require or state the use of concrete encasements on the conduits in question, and again on July 15, 1952, he received an adverse decision from H. F. Ramsford, captain (CEC) United States Navy, district officer in charge of construction, through his general contractor, Peter Sorensen;

That on July 17, 1952, affiant again replied to the adverse decision requesting an opportunity to be heard to substantiate his position and interpretation of the specifications, and on October 30, 1952, received a final decision, through his general contractor, denying his claim, even though within such denial the denying officer failed to include or take into consideration the key points upon which the claim was based;

That on November 4, 1952, affiant protested said final decision and again asked for a personal conference with naval personnel, who were familiar with the data because the decisions previously rendered were so rendered by field inspectors unfamiliar with electrical installations, and that he was forced to follow the orders of said inspectors or his contract would be canceled and be forced to surrender the project; and that he felt that no contractor should be subjected to a field inspector's decision, which is not based on plans and specifications, and then have no recourse for obtaining compensation for the additional costs of installation because of the decision;

That affiant contacted the aid of the National Electrical Contractors Association in Washington, D. C., and a Mr. George B. Roscoe, director of governmental affairs of that organization, stated that the matter was a wrongful misinterpretation of the word "service" in the specification by the inspectors, and who obtained a further consideration of affiant's claim from Comdr. T. L. Jackson, Director of Contract Administration, Department of Navy, Bureau of Yards and Docks, Washington, D. C. That the decision was adverse again, stating in the 5th paragraph of Mr. Jackson's letter that we were permitted to substitute rigid steel conduits; therefore, should encase them in concrete when actually there were on substitutions; and, furthermore, it is a known fact that ducts are not made in ¾-, 1-, and 1¼-inch sizes; and to which Mr. George B. Roscoe, above mentioned, stated was an unreasonable, unfair decision contrary to industry practice and not the error of the affiant in interpreting the specifications, and who further advised that affiant's Congressman be contacted relative to the matter;

That affiant feels that there has been discrimination between contractors by the field inspectors of the Navy Department in that on identical types of electrical installations under plans and specifications prepared by the same architect and electrical engineer and same naval jurisdiction located at Crows Landing—installed by another electrical contractor with other field inspectors—were not required to so encase the rigid steel conduits, except the service conduits, in concrete casements;

That affiant believes that he was entitled to be present at a fair arbitration hearing, orally made, to naval personnel at the site of the installation, and who were familiar with electrical work;

That affiant did always pursue his claim through his general contractor, and a copy of all correspondence was sent to or through said prime contractor (had prime contractor's permission to correspond direct).

That affiant's position concerning the interpretation of the specifications is as follows:

The contract entered into by affiant was dated June 12, 1951, and the plan was dated April 5, 1951, and the job was bid on May 9, 1951, and was contract NOy 26278, jet fueling system, Moffett Field, Calif.

Later, and during the course of installment of the underground conduits on the abovementioned job, affiant was ordered to put a concrete envelope around all rigid steel conduits, other than service conduits, coming in contact with the ground. Authority for this order was given as paragraph 2–02 (a) in the Navy Department Bureau of Yards and Docks Specification 9Yf dated October 1946. Affiant's contention was that the above-referred-to paragraph covered services only, and that the only conduits considered as service conduits in accordance with local, State, and national code books would be the two conduits from the transformers to the pole line. Affiant in accordance with said paragraph 9Yf encased such rigid steel conduits as they should be. Affiant contends that all other runs of rigid steel conduits from the main service switchboards (which were located at the transformer pads) are defined as subfeeders to equipment or control wiring and hence this would eliminate them from the classification as services. Affiant contends that the adverse decisions rendered against him were based on the theory that Bureau of Docks specification 9Yf did require encasement in concrete and that the same should be accomplished without additional cost.

Affiant further contends, to disprove the adverse decision, that in the year 1952, 1 year after the job was bid and 1 year after the plan date, the Navy Department Bureau of Yards and Docks, issued an addendum No. 1 of 1952 to said regulation 9Yf of October 1946, as follows:

"Section 2.—DETAIL REQUIREMENT

2–04—*Steel Conduit*, etc. add:

"(a) Conduit installed underground shall be encased in concrete as specified for underground ducts."

Affiant contends that this addendum paragraph covers the basic reason for which he filed his original claim May 28, 1952; namely, that Navy Specifications 9Yf at the time of the dispute did not specify that steel conduit should be encased in concrete, other than services, and only now, since the addendum of 1952 does it require the same.

Affiant contends that if a study of the matter had been made originally by competent electrical men, at the site of the installation, either affiant would not have had to so encase said conduits, or if the Navy felt it desired the same nevertheless, just compensation would be awarded to affiant for his additional efforts.

Affiant contends his claim is a just and honest one made on the basis of additional costs and expenses incurred by himself under order of the Navy personnel at the site, who were not familiar with either the regulation as it then had to be construed, or with the general industrial practice.

Wherefore, affiant prays that his claim in the sum of $1,953.53 be allowed.

ROY M. BUTCHER.

Subscribed and sworn to before me this 8th day of April 1954.

DAVID W. KNAPP,

Notary Public in and for the County of Santa Clara, State of California

DEPARTMENT OF THE NAVY,
OFFICE OF THE JUDGE ADVOCATE GENERAL,
Washington, D. C., March 22, 1954.

Hon. CHAUNCEY W. REED,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: Reference is made to your letter of January 26, 1954, to the Secretary of the Navy requesting comment on H. R. 7497, a bill for the relief of Roy M. Butcher.

The purpose of the bill is to pay $1,953.53 to Mr. Butcher in full settlement of all claims under Navy Department contract NOy 26278 which claims are based upon additional costs incurred under the terms of said contract.

Contract NOy 26278 was awarded to Mr. Peter Sorensen, of Redwood, Calif., on the basis of low bid, for the construction of jet fuel storage facilities at the naval air station, Moffett Field, Calif.

During the course of the work, Mr. Roy M. Butcher, the electrical subcontractor on the contract, objected to the interpretation of the specifications requiring the encasement of certain electrical conduit in concrete ducts. Mr. Butcher estimated his additional costs for the disputed work as $1,953.53, and submitted a claim for that amount to the prime contractor, who forwarded it to the responsible naval authorities.

Mr. Butcher's claim was reviewed on its merits three times, once in the 12th Naval District in San Francisco, and twice in the Navy's Bureau of Yards and Docks. In each review, the question of the interpretation of the specifications was decided in favor of the Government, and the claim denied.

Upon completion of all the work under the contract NOy 26278, the final voucher and the contractor's release were presented to and signed by the prime contractor. The latter document executed by the prime contractor is a release of all claims against the United States under the contract. Because of lack of privity of contract between Mr. Butcher and the Government, it is the opinion of this Department that there is no basis for considering this matter as a claim against the United States, and that the alleged claim is one for settlement between the prime and the subcontractor.

In view of the foregoing, the Department of the Navy recommends against the enactment of H. R. 7497.

The Department of the Navy has been advised by the Bureau of the Budget that there is no objection to the submission of this report to the Congress.

Sincerely yours,

IRA H. NUNN,
Rear Admiral USN,
Judge Advocate General of the Navy
(For the Secretary of the Navy).

SAN JOSE, CALIF., *November 17, 1953.*

Hon. CHARLES S. GUBSER,
Member, House of Representatives,
Bank of America Building, San Jose, Calif.

DEAR MR. GUBSER: This is relative to previous correspondence we have had concerning our claim of $1,953.53 in connection with contract NOy–26278, entered into on June 12, 1951. Some new information has come to our hands which may be helpful in obtaining a favorable decision for the above-referred-to claim.

We have just received from the Navy Department, Bureau of Yards and Docks, addendum No. 1 of 1952 to Regulation 9Yf of October 1946:

"Section 2, Detail Requirement

"2–04, Steel conduit, etc., Add:

"(a) Conduit installed underground shall be encased in concrete as specified for underground ducts."

The above-addendum paragraph covers the basic reason for which we filed our claim (information previously submitted will substantiate this statement). Upon filing the claim, we contended that 9Yf did not specify that steel conduit should be encased in concrete. However, an adverse decision was made at a low level in the Navy personnel.

Please note that this addendum is dated 1952, and that the contract we entered into was dated June 12, 1951. The plan was dated April 5, 1951, and the job was bid May 9, 1951. From the above information, a reasonable conclusion

would be that 9Yf did not specify that steel conduit should be encased in concrete when installed underground; otherwise, no addendum would have been necessary. This additional information is submitted to you with the thought that it might mean an approach to open an avenue to establish a reconsideration for a favorable decision on our claim.

With reference to the last communication we received from the General Accounting Office (a copy mailed to you with my September 26, 1953, letter), please refer to the first part of the third paragraph, which states that our direct communication with the Bureau of Yards and Docks was carried on in accordance with the information furnished us as stated in this paragraph.

Should you desire to discuss this matter further upon your return to San Jose, I would be very glad to meet you personally at your convenience. Again thanking you for your cooperation, I am

Yours very truly,

ROY M. BUTCHER.

SAN JOSE, CALIF., *May 23, 1953.*

Re Navy contract NOy 26278, Moffett Field, Calif., jet fueling system.

Hon. CHARLES S. GUBSER,
House of Representatives, Washington, D. C.

DEAR MR. GUBSER: Thank you for your letter of May 12, and frankly we are at a loss as to how to proceed. However, we are sure of one thing—that we are within our rights to request further review and consideration.

To discuss with you the technicalities by letter, and I think you would agree, would be of no avail; therefore, I will turn to the mechanics of procedure that has happened to date.

First: The naval base electrical inspector who was assigned to our project and who ordered us "to make the encasement or get off the job" stated that in his opinion it was not specified on any conduits except the service conduits, but that he was carrying out the order of his superior.

Second: When the chief inspector (his superior), and who was not an electrical man, was questioned, he stated that in his opinion concrete was called for on all conduits.

Third: The commander in charge of construction was appealed to next. His answer was that he did not want to say "Yes" or "No" because he was not an electrical man, but thought it was common practice (he was wrong in these thoughts as we later proved).

Fourth: In the meantime, the commander of construction was changed, and the new commander (who was not an electrical man) made the first definite decision against our claim.

We were refused representation at the conference based on an opinion that they could only deal with the prime contractor (the general contractor) who again does not have any technical knowledge of electrical work. This procedure is unfair to the contractor. If the naval base representatives can order a subcontractor "to proceed with an installation or get off the job," then they should not have the right to deny his representation at the conference where an extra for the installation ordered is controversial.

Fifth: The claim was sent to the captain in the district office in charge, at San Bruno, who concurred with the base commander's decision. At this point, you can see that the issue was removed from the base where the installation was made and where all the actual facts of evidence were.

Sixth: The Commander of Direct Contract Administration, Washington, D. C., upheld the previous decision.

From the fourth phase on, all decisions have concurred with previous decisions with no reference made to our pleas that the decision was not made on facts; and by a careful study of letters 1, 2, and 3 that are ataached, you can readily see that the decision is not based on the facts that were presented by us.

With reference to the discrimination: What is discrimination?

The facts in this case are:

Two identical jobs as to plans and specifications; the same electrical engineer on both jobs—yet the naval inspector on our job compels us to encase all conduits in concrete and the naval inspector on the identical job requests only the service feeders be encased in concrete. Note that we are making no issue relative to service feeders in our claim.

Should a contractor be at the mercy of a Government representative, without recourse?

As I see our position now there are three approaches:

(1) Have the whole matter referred back to the 12th Naval District at San Bruno, Calif., where the facts can be explored, and that we have direct representation.

(2) Have Ray W. Butcher, who was in charge of the project, come back to Washington and go over the facts by previous appointment with an authorized representative of the Bureau of Yards and Docks.

(3) Institute a lawsuit, and you know as well as I do that the cost to a private firm against the United States Government would be prohibitive.

We will welcome your comments on the above suggestions.

It is with regret that we burden you with our problem, but we were advised by our National Electrical Contractors Association, in Washington, D. C., that this was the only course left to pursue.

Please accept my thanks for your regular reports to the home folks. They are interesting and informative and well worth the time and effort of preparation.

With kindest personal regards, I am,

Sincerely yours,

ROY M. BUTCHER.

SAN JOSE, CALIF., *December 26, 1952.*

Re B-310-3/DMK, contract NOy 26278.

Comdr. T. L. JACKSON,
Director of Contract Administration,
Department of Navy, Bureau of Yards and Docks, Washington, D. C.

DEAR SIR: In accordance with a telephone call received from Mr. Roscoe, of the National Electrical Contractors Association, Washington, D. C., we are submitting the enclosed copies of letters and plot plan drawings traced from Y. and D. Nos. 501512 and 501513, which we wish to submit to support our position relative to a decision which was previously rendered by your office. In reviewing the information, we feel that it is self-explanatory. However, in summarizing the enclosed information, may we call to your attention the following:

1. The decision dated October 30, 1952, was received by us from Peter Sorensen (prime contractor) on November 4, 1952. Please note by copy of our letter attached that protest was filed on the same date, November 4, 1952, to Peter Sorensen.

2. NavDocks specification 28378, section 10, electrical work, 10-02: Materials and workmanship: "Unless indicated and specified otherwise, materials and workmanship shall conform to specification 9Yf and to the other applicable specification listed in section 1." Section 1 refers to 9Yf, October 1946, electrical apparatus, distributing systems and wiring, which is the only applicable specification.

3. Section 10, electrical work, paragraph 10-7: "Service equipment shall consist of primary high-voltage switch and fuses mounted on existing 2,300-volt pole, pothead, underground cable, transformers, circuit breaker and distribution board, all assembled as outdoor type floor mounted, weatherproof integral unit." We take the position that the above paragraph definitely defines the service equipment of the above contract, and that the services are the 2 conduits with cable running from the 2,300-volt line to the main distribution center, as per plot plan attached, and that all other conduits feeding lighting, tanks, control wires, etc., beyond the point where service equipment is installed, are not required by plans and specifications to be encased in concrete.

4. Regarding the decision rendered, please note that no fiber, cement-asbestos, vitrified clay, or soapstone ducts were specified. Therefore, no substitution was made.

5. Please refer to our letter of November 4, 1952, to Peter Sorensen, page 2, paragraph 1, wherein we refer to a parallel set of plans and specifications, architect and engineer were the same as on the installation made by us at Moffett Field, and yet no concrete encasement of conduits beyond the service equipment was required on this installation.

In view of the enclosed information and the above facts as stated, we respectfully request further consideration to the previous decision given, and wish to state that Mr. Peter Sorensen, general contractor, has full knowledge and has given consent for us to submit this information directly to you.

Respectfully submitted.

ROY M. BUTCHER.